

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B1-PLR-118256-00

Date:

April 3, 2001

Legend:

X =

Y =

State =

D1 =

D2 =

D3 =

This responds to the letter dated September 14, 2000, submitted on behalf of X, requesting an extension of time under § 301.900 of the Procedure and Administration Regulations to elect to treat Y as a qualified subchapter S subsidiary (QSub) for federal tax purposes.

FACTS

According to the information submitted, X was incorporated under State law, and elected subchapter S status, effective D1. Y was incorporated on D2, and elected subchapter S status, effective D2. On D3, X acquired all of the outstanding stock of Y. X intended to treat Y as a QSub, effective D3, but inadvertently failed to timely file the election.

LAW AND ANALYSIS

Section 1361(b)(3)(B) of the Internal Revenue Code defines a QSub as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a)(4) provides that the election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the election cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

In Notice 97-4, 1997-1 C.B. 351, the Internal Revenue Service prescribed temporary election procedures for an S corporation to elect QSub treatment for a subsidiary. These procedures included use of Form 966, Corporate Dissolution or Liquidation, to make the QSub election. In general, the election was effective on the date the Form 966 was filed or up to 75 days prior to the filing of the form.

Effective January 20, 2000, final regulations (TD 8869, 2000-6 I.R.B. 498 [65 F.R. 3843]) were published relating to QSubs and other subsidiaries of S corporations. The final regulations provided that QSub elections shall be made by filing the form to be provided for that purpose. In the preamble to those final regulations, taxpayers were instructed to continue following the instructions in Notice 97-4 until a new QSub election form was available.

On November 20, 2000, in Notice 2000-58, 2000-47 I.R.B. 491, the Service announced that new Form 8869, Qualified Subchapter S Subsidiary Election, was available for QSub elections.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election to mean an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that

X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of sixty (60) days from the date of this letter to elect to treat Y as a QSub, effective D3. The election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Y is a valid QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes