

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:BR01-PLR-163756-02

Date:

January 28, 2003

Legend:

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to your request dated November 14, 2002, on behalf of X, requesting that X be given an extension of time in which to elect to treat its wholly-owned subsidiary, Y, as a qualified subchapter S subsidiary (QSub) under section 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under State law on Date 1 and elected subchapter S status on Date 2. Y was incorporated on Date 3 and is a wholly-owned subsidiary of X. X intended to treat Y as a QSub effective Date 4; however, X inadvertently failed to timely file the proper election.

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X represents that it has acted responsibly and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the election.

LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in section 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub.

Section 1361-3(a) of the Income Tax Regulations provides that an S corporation may elect to treat an eligible subsidiary as a QSub by filing with the appropriate service center the form prescribed by the Internal Revenue Service. The election may be effective no more than two months and 15 days prior to the date of the filing, provided that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive relief is in effect. Notice 2000-58, 2000-2 C.B. 491, provides that Form 8869, Qualified Subchapter S Subsidiary Election, should be used to elect QSub treatment. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

Under section 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I. Requests for relief under section 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). Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

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CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly X is granted an extension of time of sixty (60) days from the date of this letter to file a Form 8869 with the appropriate service center to elect to treat Y as a QSub effective Date 4. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is an S corporation or whether Y is a QSub for federal tax purposes.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) 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 will be sent to the taxpayer representative.

Sincerely,

/s/ Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for section 6110 purposes