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due to inadvertence, the Form 8832, Entity Classification Election, the Form 2553, Election by a Small Business Corporation, and the Form 8869, Qualified Subchapter S Subsidiary Election, were not timely filed.

LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in this section. An eligible entity with a single owner can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or a disregarded entity.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b) by filing Form 8832 with the service center designated on the form.

Section 301.7701-3(c)(1)(iii) provides, in part, that an election made under section 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed.

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 1.1361-3(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

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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.

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 301.9100-2 provides automatic extension 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. 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 1362(a) of the Code provides that a small business corporation can elect to be treated as an S corporation. Section 1362(b) provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) of the Code provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines that reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as being timely made for that taxable year and effective as of the first day of that taxable year.

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that X has satisfied the requirements of section 301.9100-3 with respect to its late entity classification election and late QSub election, and, provided that X otherwise qualifies as an S corporation, that X has satisfied the requirement of section 1362(b)(5) with respect to its late S election.

As a result, X is granted an extension of time of sixty (60) days from the date of this letter to file a properly executed Form 8832 with the appropriate service center, effective Date 1, a properly executed Form 2553 with the appropriate service center, effective Date 1, and a properly executed Form 8869 with the appropriate service center, effective Date 1. A copy of this letter should be attached to each election.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

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

Pursuant to the power of attorney on file with this office a copy of this letter is being sent to the taxpayer.

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

cc :