

Internal Revenue Service

Number: **200513021**

Release Date: 4/1/2005

Index Number: 1361.00-00, 1361.05-00,
9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-154998-04

Date:
December 03, 2004

Legend

X =

X1 =

Company =

SH =

D1 =

D2 =

D3 =

D4 =

Dear :

This responds to a letter dated October 19, 2004, submitted on behalf of X, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to elect to treat X1 as a qualified subchapter S subsidiary (QSub) for federal tax purposes.

FACTS

According to the information submitted, Company was created, and elected to be treated as an S corporation, on D1. That same day, X1 was created as a wholly owned subsidiary of Company, and an election to be treated as a QSub was filed on its behalf. On D2, Company created X and filed an election to treat X as a QSub. On D3, Company transferred X1 to X, such that X1 was a wholly owned subsidiary of X, and X was a wholly owned subsidiary of Company. On D4, X and X1 were sold to and purchased by SH. SH filed an election to treat X as an S corporation effective D4. X further intended to treat X1 as a QSub effective D4, but inadvertently failed to timely file the appropriate 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.

A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, *Qualified Subchapter S Subsidiary Election*, with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations 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 form 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.

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 as an election with a due date 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.

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 sixty (60) days from the date of this letter to elect to treat X1 as a QSub, effective D4. 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 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 express concerning whether X is a valid S corporation or whether X1 is a valid QSub.

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.

Sincerely,

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

Enclosures (2)
Copy of this letter
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