

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3-PLR-135127-01
Date:
August 8, 2001

LEGEND

Company =

Subsidiary =

State =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This responds to your authorized representative's letter dated June 22, 2001 requesting relief under § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

The following facts have been represented. Company was incorporated on Year 1 under the laws of State. On Date 1, Company made an election under § 1362 to be treated and taxed as an S corporation. On Date 2, Company incorporated Subsidiary as a wholly owned subsidiary of Company. It was intended that Company would elect qualified subchapter S subsidiary (QSub) status for Subsidiary effective Date 2. However, the election was never filed.

Company treated Subsidiary as a QSub on its Form 1120S filed for the year ending Date 3 and for the year ending Date 4.

LAW AND ANALYSIS

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Section 1361(b)(3)(B) of the Internal Revenue Code defines the term "qualified subchapter S subsidiary" as a domestic corporation which is not an ineligible corporation as defined in § 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)(3) of the Income Tax Regulations provides that the QSub election may be made by the S corporation parent at any time during the taxable year. Pursuant to § 1.1361-3(a)(4) a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the 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.

On November 20, 2000, in Notice 2000-58, 2000-2 C.B. 491, the Internal Revenue Service announced that new Form 8869, Qualified Subchapter S Subsidiary Election, is available for an S corporation to elect to treat one or more of its eligible subsidiaries as a QSub.

Under § 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.

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 extensions of time for making certain elections, but does not apply to QSub elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. 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 Company has established reasonable cause for not making a timely QSub election and that the other requirements of §§ 301.9100-1 and 301.9100-03 have been satisfied. Accordingly, Company is granted an extension of time of sixty (60) days from the date of this letter to file, with the appropriate Service Center, a completed Form 8869 electing QSub status for Subsidiary effective Date 2. A copy of this letter should be attached to the Form 8869 filed with the Service Center.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of the transactions discussed in this letter. Specifically, no opinion is expressed concerning whether Company is an S corporation or whether Subsidiary is otherwise eligible to be a QSub.

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

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

Enclosures (2):
Copy of this letter
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