

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-106787-02
Date:
December 3, 2002

Legend

Corporation A =

Corporation B =

Shareholders =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated January 29, 2002, and subsequent correspondence, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that Corporation A be granted an extension of time to file an election for Corporation B to be a qualified subchapter S subsidiary (QSub) of Corporation A effective Date 2.

Facts

Shareholder incorporated Corporation A on Date 1 and timely filed a Form 2553, Election by a Small Business Corporation, effective Date 1.

On Date 2, Shareholders transferred all of the stock of Corporation B to Corporation A and intended to cause Corporation A to elect to treat Corporation B as a QSub. Corporation A inadvertently failed to file timely Form 8869, Qualified Subchapter S Subsidiary Election.

Law

Section 1361(a)(1) of the Internal Revenue Code generally provides that an "S corporation" is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b) provides the definition of a "small business corporation" for purposes of subchapter S.

Section 1361(b)(1)(B) provides that, in order to be a small business corporation, a taxpayer cannot have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual.

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 § 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. The election is made by filing Form 8869.

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 the form prescribed by the IRS and that the election may be effective no more than two months and 15 days prior to the date of the filing. Notice 2000-58, 2000-2 C.B. 491, provides that Form 8869, Qualified Subchapter S Subsidiary Election, should be used to elect QSub treatment.

Section 301.9100-1(c) generally permits the Commissioner to grant a reasonable extension of time to make a regulatory election if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a notice published in the Internal Revenue Bulletin.

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. Further, § 301.9100-2 provides automatic extensions of time for making certain elections, and § 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 and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Corporation A is granted an extension of time of 60 days from the date of this letter to make an election to treat Corporation B as a QSub effective Date 2. Corporation A should submit a properly completed Form 8869 to the appropriate service center with a copy of this letter. A copy is enclosed for that purpose.

Except for the specific rulings above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described under any other provision of the Internal Revenue Code. Specifically, no opinion is expressed concerning whether Corporation A is a valid S corporation or whether its subsidiary, Corporation B is otherwise eligible to be a QSub.

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.

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

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

Enclosures (3):
Copy for § 6110 purposes
Copies of this letter (2)