

Internal Revenue Service

Department of the Treasury
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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01 – PLR-131253-05

Date:

August 19, 2005

Legend:

X =

Sub =

Date 1 =

Dear :

This responds to the letter dated May 13, 2005, and subsequent correspondence, submitted on behalf of X, requesting an extension of time pursuant to section 301.9100-3 of the Procedure and Administration Regulations to elect to treat a subsidiary as a qualified subchapter S subsidiary (QSub) under section 1361(b)(3)(B) of the Internal Revenue Code.

Facts:

The information submitted states that X is a corporation that has elected to be an S corporation. X intended to elect to treat Sub, its wholly owned subsidiary, as a QSub, effective Date 1, but inadvertently failed to file timely the appropriate election.

Law and Analysis:

Section 1362(a) provides that, except as provided in section 1362(g), a small business corporation may elect, in accordance with the provisions of section 1362, to be an S corporation.

PLR-131253-05

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSub) as a domestic corporation which 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.

Section 1361(b)(3)(A) provides that a corporation which is a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items of the S corporation.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner for making the QSub election. 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. The election may be effective on the date the Form 8869 is filed or up to 75 days prior to the filing of the form, provided that date is not before the parent's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive relief is in effect.

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 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.

Conclusion:

PLR-131253-05

Based solely on the facts and the representations submitted, we conclude that the requirements of section 301.9100-3 have been satisfied. As a result, X is granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub as a QSub effective Date 1. A copy of this letter should be attached to the election.

This ruling is contingent on X treating Sub as a QSub as of Date 1. Accordingly, the shareholders of X must include their pro rata shares of the separately stated and nonseparately computed items of X as provided in section 1366, make any adjustments to basis provided in section 1367, and take into account any distributions made by X as provided in section 1368 consistent with Sub being a QSub of X. If X or its shareholders fail to treat X and Sub as described above, this ruling will be null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Sub is otherwise a valid QSub for federal tax purposes.

This ruling is directed only to the taxpayer who requested 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 is being sent to X's representative.

Sincerely,

/s/ Heather C. Maloy

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purpose-s