

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-134792-01

Date:

January 7, 2002

X =

Y =

Sub1 =

Sub2 =

State =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to a letter dated May 22, 2001, and subsequent correspondence, written on behalf of Y, requesting that the Service grant Y an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat X and Sub2 as qualified subchapter S subsidiaries (QSub) under § 1361(b)(3) of the Internal Revenue Code.

Facts:

The information submitted states that X is a corporation organized under the laws of State on D1 that was taxed as an C corporation. Y is a Corporation organized under the laws of State that elected to be an S corporation effective D2. On D2, the shareholders of X transferred all the stock of X to Y.

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Y formed Sub1, a wholly owned subsidiary, on D3. Y formed Sub2, a wholly owned subsidiary, on D4. Y made QSub elections for Sub1 and Sub2 effective D3. However, because Sub2 was not formed until D4, the QSub election for Sub2 was not valid.

On D3 Y transferred one share of X stock to Sub1. On D4, Y transferred its remaining shares of X stock to Sub2. Also on D4, X was converted into a State limited partnership. Y intended to make a QSub election for X effective D2. However, Y failed to timely file a Form 8869, Qualified Subchapter S Subsidiary Election, for X.

Law and Analysis:

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 § 1362(a) is in effect for such year.

Section 1361(b)(3)(A) provides that 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 (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation, which is not an ineligible corporation, in which 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. 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 § 301.9100-1(c) of the Procedure and Administration Regulations, 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, 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 1.1361-2(b) of the Income Tax Regulations provides that for purposes of satisfying the 100 percent stock ownership requirement in § 1361(b)(3)(B), stock of a corporation is treated as held by an S corporation if the S corporation is the owner of that stock for Federal income tax purposes.

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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.

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 the representations submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Y is granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat X as a QSub effective D2. Y is also granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub2 as a QSub effective D4. A copy of this letter should be attached to the elections.

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 Y is a valid S corporation or whether X otherwise is 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.

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

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes