

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-104137-03

Date:

May 16 2003

Legend:

P =

Q1 =

Q2 =

Q3 =

D1 =

D2 =

D3 =

State =

Dear :

This responds to a letter dated January 8, 2003, together with subsequent correspondence, requesting a ruling under section 301.9100-(3)(a) of the Procedure and Administration Regulations that P be granted an extension of time to file an election to treat Q1 and Q2 as qualified subchapter S subsidiaries under section 1361(b)(3) of the Internal Revenue Code, effective D2, and to treat Q3 as a qualified subchapter S subsidiary under section 1361(b)(3), effective D3.

FACTS

According to the information submitted, P was incorporated on D1 under the laws of State. P elected subchapter S status, effective, D1. On D2, P acquired 100 percent of Q1 and Q2. On D3, P formed Q3, a 100 percent owned subsidiary. P intended to elect to treat Q1 and Q2 as qualified S subsidiaries, effective D2, and to elect to treat Q3 as a qualified S subsidiary, effective, D3. However, P and Q1, Q2, and Q3 inadvertently failed to file timely elections.

LAW AND ANALYSIS

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 section 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 qualified subchapter S subsidiary. The election is made by filing Form 8869, Qualified Subchapter S Subsidiary Election.

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.

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. See section 301.9100-1(a). Further, section 301.9100-2 provides automatic extensions of time for making certain elections, and section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2.

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. See section 301.9100-3(a).

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, P is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat its wholly-owned subsidiaries, Q1 and Q2, as qualified subchapter S corporation subsidiaries, effective D2, and to treat its wholly-owned subsidiary Q3 as a qualified subchapter S corporation subsidiary, effective D3. P should submit the properly completed Form 8869 to the appropriate service center. A copy of this letter

should be attached to the election. A copy is enclosed for this purpose.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayers requesting 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 your authorized representative.

Sincerely,

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes