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From:

Sent: Tuesday, November 18, 2008 3:52:48 PM

To:

Cc:

Subject: F Reorganizations and S corporation/QSub elections

Hi

This email is in reference to a conversation we had a few weeks ago on accepting QSub elections. A parent corporation needs to have an effective S election in place in order to make a QSub election for a subsidiary. In a reorganization pursuant to § 368(a)(1)(F) (an F reorg), an S election will carry over to the new parent corporation. However, when an S corporation undergoes a reorganization whereby the S corporation becomes a qualified subchapter S subsidiary (QSub) of a new holding company, the reorganization will qualify as an F reorg, and the S election will carry over to the new holding company, only if a QSub election is made for the old S corporation effective immediately following the transaction. Application of this principle becomes complicated when the new parent corporation is also getting a new EIN under Rev. Rul. 2008-18, 2008-13 I.R.B. 674. Rev. Rul. 2008-18 provides that when an S corporation undergoes an F reorg whereby the S corporation becomes a qualified subchapter S subsidiary (QSub) of a new holding company, the new holding company must get a new EIN.

C owns all the stock of Z, an S corporation with an EIN of 33-3333333. In Year 1, Z forms Newco, which in turn forms Mergeco. Pursuant to a plan of reorganization, Mergeco merges with and into Z, with Z surviving and C receiving solely Newco stock in exchange for Z stock. Newco meets the requirements for qualification as a small business corporation and timely elects to treat Z as a QSub, effective immediately following the transaction. The transaction meets the requirements of a reorganization under § 368(a)(1)(F). When the service center receives the Form 8869 submitted on behalf of Z, Newco will have to be treated as an S corporation, a continuation of Z. Z will not be submitting a final 1120S. Rather Newco will report all of Z's and Newco's income on its 1120S.

[REDACTED]

However, in the meantime, when this type of situation is encountered, you may treat the situation as outlined above because taxpayers can rely on Rev. Rul. 2008-18 from the date of publication. Thank you for your assistance and please contact me with any questions.