

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-134471-09

Date:

January 13, 2010

Parent =

Subsidiary =

State =

D1 =

D2 =

D3 =

D4 =

Year 1 =

Dear

This responds to the letter dated July 22, 2009, submitted on behalf of Parent, requesting relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations that Parent be granted an extension of time to elect to treat Subsidiary as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code) and requesting relief under § 1362(b)(5) of the Code for Parent to elect to be an S corporation.

The information submitted states that Parent was incorporated under the laws of State on D2. Subsidiary was incorporated on D1 under the laws of State, and all of its stock was acquired by Parent on D3. Parent represents that it intended to elect to be

treated as an S corporation for federal tax purposes on D2 and then elect to treat Subsidiary, its wholly owned subsidiary, as a QSub effective D4. However, due to inadvertence, neither Form 2553, Election by a Small Business Corporation, nor Form 8869, Qualified Subchapter S Subsidiary Election, was timely filed.

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides that if an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable 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, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a qualified subchapter S subsidiary.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner for making a QSub election. A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869 with the appropriate service center. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and that (2) granting relief will not prejudice the interests of the Government.

Based solely on the facts and the representations made, and provided that Parent otherwise qualifies as an S corporation, we conclude that Parent will be recognized as an S corporation effective D2. A Form 2553 along with a copy of this letter must be forwarded to the appropriate service center within 60 days from the date of this letter.

In addition, based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Parent is granted an extension of time of 60 days from the date of this letter to elect to treat Subsidiary as a QSub, effective D4. The election should be made by filing Form 8869 with the appropriate service center, and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

This ruling is conditioned upon Parent, Subsidiary, and Parent's shareholder filing any amended returns for Year 1 and subsequent taxable years, and making such adjustments, as necessary, consistent with Parent's status as an S corporation effective D2 and Subsidiary's status as a QSub effective D4, within 60 days from the date of this ruling. A copy of this letter must be attached to any return to which it is relevant.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether Parent is, in fact, an S corporation, or whether Subsidiary is 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being mailed to Parent's authorized representative.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs & Special Industries)

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