

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-121847-12
Date: August 27, 2012

LEGEND

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated May 9, 2012, submitted on behalf of Parent by its authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code for Parent to elect to be an S corporation and requesting extensions of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 (together, the Subs) as qualified subchapter S subsidiaries (QSubs).

FACTS

Parent formed on Date 1 as a State limited liability company. On Date 2, Parent converted to a corporation under State law, effective Date 1. Parent intended to be an S corporation effective Date 1. However, Parent's Form 2553, Election by a Small Business Corporation, was not timely filed.

Parent purchased all of the stock of the Subs on Date 3 and joined with the seller to make an election with respect to the Subs under § 338(h)(10). Parent intended to make QSub elections effective the following day on Date 4, but failed to timely file Forms 8869, Qualified Subchapter S Subsidiary Election.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation can elect to be treated as 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 held by an S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of 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 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 1.1361-4(b)(4) provides that an S corporation that makes a qualified stock purchase of a target may make an election under § 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSub election with respect to the target. If an S corporation makes an election under § 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSub election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of § 338(h)(2)). If the QSub election is effective on the day after the acquisition date, the liquidation under § 1.1361-3(a)(2) occurs immediately after the deemed asset purchase by the new target corporation under § 338.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of §§ 301.9100-2 and 301.9100-3. Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based on the facts submitted and representations made, we conclude that Parent has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that Parent is eligible for relief under § 1362(b)(5). We

further conclude that Parent has satisfied the requirements of § 301.9100-3 with respect to its late QSub elections for the Subs.

As a result, we grant Parent an extension of time of 120 days from the date of this letter to file a properly executed Form 2553 with the appropriate service center, effective Date 1, and properly executed Forms 8869 with the appropriate service center, effective Date 4. A copy of this letter should be attached to each election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Parent is a valid S corporation, or whether the Subs are eligible to be QSubs.

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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By:

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes