

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-117193-13

Date:
September 10, 2013

LEGEND

Parent =

Subsidiary 1 =

Subsidiary 2 =

A =

State 1 =

State 2 =

Date =

Dear :

This letter responds to a letter dated April 9, 2013, and subsequent correspondence, submitted on behalf of Parent by its authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code (Code) for Parent to elect to be an S corporation and an extension of time under § 301.9100-3 of the

Procedure and Administration Regulations for Parent to elect to treat Subsidiary 1 and Subsidiary 2 as qualified subchapter S subsidiaries (QSubs).

FACTS

Parent was incorporated under State 1 law on Date. A, the sole shareholder of Subsidiary 1, a State 1 corporation, and Subsidiary 2, a State 2 corporation, contributed all of A's shares in Subsidiary 1 and Subsidiary 2 to Parent on Date. A, the sole shareholder of Parent, intended for Parent to elect to be treated as an S corporation effective Date. In addition, Parent intended to make QSub elections for Subsidiary 1 and Subsidiary 2 effective Date. However, due to inadvertence, Form 2553, Election by a Small Business Corporation, and Forms 8869, Qualified Subchapter S Subsidiary Election, were not timely filed.

LAW

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b)(1) 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. Section 1362(b)(3) provides, however, that 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 as defined in § 1361(b)(2), 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. Section 1.1361-3(a)(2) provides that 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 under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not 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 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) 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 solely on the facts submitted and the representations made, we conclude that Parent has established reasonable cause for failing to make an S corporation election in a timely manner and, thus, is eligible for relief under § 1362(b)(5). In addition, Parent has satisfied the requirements of § 301.9100-3 with respect to the late QSub elections for Subsidiary 1 and Subsidiary 2.

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

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether Parent is otherwise eligible to be an S corporation or whether Subsidiary 1 and Subsidiary 2 are eligible to be QSubs.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the 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 ruling requests, it is subject to verification on examination.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____/s/_____
Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: