

Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: **199944024**

Person to Contact:

Release Date: 11/5/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-106948-99

Date:

August 6, 1999

Parent =

Subsidiary 1 =

Subsidiary 2 =

Date 1 =

Year 1 =

Dear :

This letter responds to a March 31, 1999 letter and subsequent correspondence submitted on behalf of Parent by Parent's authorized representative requesting relief under § 1362(b)(5) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations.

The information submitted states that Subsidiary 1 was a fiscal year S corporation with union and non-union workers. Pursuant to negotiations with the union, the shareholders of Subsidiary 1 formed Parent and contributed the stock of Subsidiary 1 to Parent. Subsidiary 2 also became a subsidiary of Parent. This restructuring terminated Subsidiary 1's S corporation election.

Recently when Parent searched for a new accounting firm it learned about the concept of qualified subchapter S subsidiaries (QSSS) and that Parent could have qualified for S corporation status beginning with the fiscal year ending Date 1 of Year 1.

The shareholders relied on their former accountants for relevant tax advice; the former accountants never discussed the possibility of becoming a QSSS group for the year ending Date 1 of Year 1.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) 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 QSSS. The statutory provision does not, however, provide guidance on the manner in which the QSSS election is made or the effective date of the election.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for the making of a QSSS election. Under Notice 97-4, a taxpayer makes a QSSS election with respect to a subsidiary by filing a Form 966 (Corporate Dissolution or Liquidation), subject to certain modifications, with the appropriate service center. The election may be effective on the date Form 966 is filed or up to 75 days prior to the filing of the form, provided that date is not before the parent's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSSS for the entire period for which the retroactive election is in effect.

Section 301.9100-1(c) of the regulations provides that the Commissioner has the discretion to grant a reasonable extension of the time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines 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 (2) granting relief will not prejudice the interests of the government.

Based solely on the facts and the representations submitted, we conclude that Parent has established reasonable cause for failing to make a timely election to be an S corporation for Parent's taxable year ending Date 1 of Year 1. Accordingly, provided that Parent makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective for Parent's taxable year ending Date 1 of Year 1, within 60 days following the date of this letter, then such election will be treated as timely made for Parent's taxable year ending Date 1 of Year 1. A copy of this letter should be attached to the Form 2553. This ruling is conditioned on Parent and its shareholders filing, within 60 days following the date of this letter, any amended returns consistent with the treatment of Parent as an S corporation beginning with its taxable year ending Date 1 of Year 1.

In the present situation, the requirements of § 301.9100-3 have been satisfied. As a result, Parent is granted an extension of time for making the elections to treat Subsidiary 1 and Subsidiary 2 as QSSSs, effective for Parent's taxable year ending Date 1 of Year 1 until 60 days following the date of this letter. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached.

Except as specifically set forth above, we neither express nor imply any opinion as to the federal income tax consequences of the transactions described above nor related transactions under any other provision of the Code. Specifically, we express no opinion concerning the formation of any entity or concerning Parent's status as an S corporation and Subsidiary 1 and Subsidiary 2's status as QSSSs.

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

According to the power of attorney on file with this office a copy of this letter will be sent to Parent's authorized representative.

Sincerely,

PAUL F. KUGLER
Office of the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes