

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-134832-01

Date:

October 26, 2001

Legend

Company =

Division =

Subsidiary =

State =

Shareholders =

a =

b =

c =

Dear

This letter responds to a letter dated June 25, 2001, and subsequent correspondence, requesting on behalf of Company an extension of time pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations for Company to elect to treat Subsidiary as a qualified subchapter S subsidiary under § 1361(b)(3) of the Internal Revenue Code. Company and Subsidiary's shareholders also requested an extension of time pursuant to §§ 301.9100-1 through 301.9100-3 to file a § 338(h)(10) election under §§ 338(g) and 338(h)(10). That request will be dealt with in a separate letter.

FACTS

According to the information submitted, Company was incorporated on a under the laws of State. Company has six shareholders, Shareholders. Through its limited liability company, Division, a disregarded entity, Company purchased all of the outstanding stock of Subsidiary on b. Thus, Subsidiary became a wholly owned subsidiary of Company. Company represents that it intended to elect to treat Subsidiary as a qualified subchapter S subsidiary ("QSub") and to file a § 338(h)(10) election. However, Company failed to timely file the proper elections.

Company represents that Subsidiary meets all of the requirements of a QSub under § 1361(b)(3)(B). Company also represents that it relied solely on the tax advice of its attorneys, serving as legal counsel and tax advisor for the acquisition, who failed to advise Company of the required QSub election. In addition, Company represents that it was not aware that a QSub election was required.

LAW & ANALYSIS

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

A taxpayer makes a QSub election for a subsidiary by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate Service Center. The election may be effective on the date the Form 8869 is filed or up to two months and 15 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 QSub for the entire period for which the retroactive relief is in effect. If a valid QSub

election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

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

Section 1.1361-4(b)(4) provides, in part, 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 § 1.1361-4(a)(2) occurs immediately after the deemed asset purchase by the new target corporation under § 338.

Section 1.338(h)(10)-1T(d)(3) provides, in part, that when T is an S corporation target, T's S election continues in effect through the close of the acquisition date (including the time of the deemed asset sale and the deemed liquidation) notwithstanding § 1362(d)(2)(B).

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six 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 including an election whose due date is prescribed by a regulation published in the Federal Register.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

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.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

CONCLUSION

Based on the facts submitted and representations made, we conclude that the

requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Company is granted an extension of time of 60 days from the date of this letter to make an election to treat Subsidiary as a QSub effective c, assuming Company makes a § 338 election with respect to Subsidiary if granted an extension of time to make the election in a separate letter, or, if no § 338 election is made, effective b. A copy of this letter should be attached to the Form 8869 filed with the Service Center. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether Company is a valid S corporation, whether Subsidiary is a valid QSub for federal tax purposes, or whether Division is a disregarded entity for federal tax purposes. In addition no opinion is expressed or implied concerning whether Company may make a § 338 election with respect to Subsidiary.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Company's authorized representative.

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

Sincerely Yours,

/s/

Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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