

Internal Revenue Service

Department of the Treasury

Number: **200306030**
Release Date: 02/7/2003
Index Numbers: 1362.01-03; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-138520-02
Date:
November 4, 2002

Legend

Company =

Subsidiary =

State 1 =

State 2 =

Shareholders =

a =

b =

c =

Dear :

This letter responds to a letter dated June 25, 2002, 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.

FACTS

According to the information submitted, Company is an S corporation that was incorporated on a under the laws of State 1. Subsidiary was also an S corporation that was incorporated on b under the laws of State 2. Company and Subsidiary were owned by the same two shareholders, Shareholders.

On c, Shareholders contributed all of their respective shares of stock of Subsidiary to Company. Thus, Subsidiary became a wholly owned subsidiary of Company. Company represents that it intended to treat Subsidiary as a qualified subchapter S subsidiary ("QSub"). However, Company inadvertently failed to timely file the proper election for Subsidiary to be a QSub.

Company represents that, except for the election, Subsidiary meets all of the requirements of a QSub under § 1361(b)(3)(B). Company further 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 make the required QSub election.

LAW & ANALYSIS

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" 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.

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. A copy of this letter should be attached to the Form 8869 filed with the Service Center. A copy is enclosed for that purpose. This ruling is contingent on Company filing income tax returns for itself and Subsidiary consistent with the treatment of Subsidiary as a QSub beginning c.

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 or whether Subsidiary is a valid QSub for federal tax purposes. In addition, no opinion is expressed or implied concerning the tax consequences of the acquisition by Company of all of the stock of Subsidiary followed by a QSub election for 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,

/s/

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special
Industries)

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