

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-102038-03

Date:

April 14, 2003

LEGEND

X =

Y =

d1 =

d2 =

d3 =

d4 =

State =

:

This letter responds to a letter dated December 13, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to elect to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B) of the Internal Revenue Code.

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Facts

According to the information submitted, X was incorporated in State on d1 and elected to be an S Corporation effective d2. Y was incorporated in State on d3 and elected to be an S Corporation effective d3.

On d4, X acquired all the shares of Y stock. X intended to treat Y as a QSub effective d4; however, X inadvertently failed to timely file the proper election.

Law and Analysis

Section 1361(b)(3)(B) defines the term “QSub” as any 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 subsidiary as a QSub. The election is made by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

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 Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) provides that a regulatory election includes 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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3

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will be granted when the taxpayer provides 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 that granting relief will not prejudice the interests of the Government.

Conclusion

Based on the information submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective d4. A copy of this letter should be attached to the Form 8869 filed with the service center. A copy is included for that purpose.

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, no opinion is expressed concerning whether X is a valid S corporation or whether Y is a valid QSub.

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 the power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

Sincerely,

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

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