

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-102780-02

Date:

October 30, 2002

Legend

P =

Q =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated January 11, 2002, and subsequent correspondence, requesting a ruling under § 301.9100-(3)(a) of the Procedure and Administration Regulations that P be granted an extension of time to file an election to treat Q as a qualified subchapter S subsidiary under § 1361(b)(3) of the Internal Revenue Code, effective Date 1.

Facts

P was incorporated on Date 1 in State. Also on Date 1, P acquired 100 percent of Q. It is represented that, on Date 2, P timely elected S corporation status effective Date 1. It is also represented that P intended to elect to treat Q as a qualified S subsidiary, effective Date 1, but P and Q inadvertently failed to file a timely election.

Law and Application

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in § 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a qualified subchapter S subsidiary. The election is made by filing Form 8869, Qualified Subchapter S Subsidiary Election.

Section 301.9100-1(c) permits the Commissioner to grant a reasonable extension of time for making certain elections. Section 301.9100-3 provides that an extension of time to file certain elections will be granted if the taxpayer is able to establish that it acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

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 an election. See § 301.9100-1(a). Further, § 301.9100-2 provides automatic extensions of time for making certain elections, and § 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. See § 301.9100-3(a).

Conclusion

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, P is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat its wholly owned subsidiary, Q, as a qualified subchapter S corporation effective Date 1. P should submit the properly completed Form 8869 to the appropriate service center. A copy of this letter should be attached to the election. A copy is enclosed for this purpose.

Except for the specific rulings above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Internal Revenue Code.

Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to the requested tax representative.

Pursuant to your request and a Power of Attorney on file with this office, we are sending a copy of this letter by facsimile transmission to the requested tax representative.

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.

Sincerely,

/s/

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

Enclosures (3):

Copy for § 6110 purposes

Copies of this letter (2)