

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-147252-02

Date:

January 6, 2003

Legend

X =

Y =

Z =

d1 =

d2 =

d3 =

State =

Dear :

This letter responds to a letter dated August 22, 2002, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that X be granted an extension of time to make an election under § 1361(b)(3)(B) of the Internal Revenue Code for the taxable year beginning d2.

PLR-147252-02

Facts

X, Y, and Z were incorporated in State. Y and Z are the wholly owned subsidiaries of X. On d1, X filed a Form 2553, Election by a Small Business Corporation, in which it elected to be taxed as an S corporation for federal income tax purposes. The election was granted effective d2.

At the time the election was made, X intended to treat Y and Z as qualified subchapter S subsidiaries. However, X failed to file a Form 8869, Qualified Subchapter S Subsidiary Election.

At all times relevant, X has treated Y and Z as qualified subchapter S subsidiaries and has filed all relevant income tax returns as if Y and Z were qualified subchapter S subsidiaries.

X became aware of its failure to properly elect qualified subchapter S subsidiary treatment for Y and Z on d3. X submitted a request for relief under § 301.9100-1 and § 301-9100-3.

Law and Analysis

Section 1361(a)(1) provides that for the purposes of the Internal Revenue Code the term S corporation means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect. § 1361(b)(1) provides that a small business corporation is any domestic corporation which is not ineligible and which does not—(A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in (c)(2), or an organization described in (c)(6)); (C) have a non-resident alien as a shareholder; and (D) have more than 1 class of stock.

Section 1362(b)(3)(A) provides that a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation and that all assets, liabilities, and items of income, deduction and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities and such items of the S corporation. Section 1362(b)(3)(B) provides that the term qualified subchapter S subsidiary means any domestic corporation, that is not an ineligible corporation, if 100% of the stock of such corporation is held by the S corporation and the S corporation elects to treat the subsidiary as a qualified subchapter S subsidiary.

A taxpayer makes a Qualified Subchapter S Subsidiary Election by filing a Form 8869 with the appropriate service center. Section 1.1361-3(a)(3) provides that the time for making such election is any time during the S corporation parent's taxable year. Section 1.1361-3(a)(4) provides that a qualified subchapter S subsidiary election shall be effective

PLR-147252-02

on the date specified on the election form or on the date the election form is filed if no date is specified. Section 1.1361-3(a)(3) provides that the effective date 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. Section 1.1361-3(a)(6) provides that an extension of time for filing an election to treat a wholly owned subsidiary as a qualified subchapter S subsidiary may be available under procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(a) provides that the regulations under § 301.9100-2 and § 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election under this section. Section 301.9100-1(a) further provides that § 301.9100-3 provides extensions of time for making regulatory elections that do not meet the requirements of § 301.9100-2. 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.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 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 the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that, subject to § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of the Income Tax Regulations); (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Conclusion

Based upon the information submitted and representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. As a result, the taxpayer has 60 days from the date of this ruling to file a Form 8869 with the appropriate service center to treat Y and Z as qualified subchapter S subsidiaries effective d2. A copy of this letter should be attached with the election. A copy is included for that purpose.

PLR-147252-02

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.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

/s/

Heather C. Maloy
Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes