

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199945021**

Person to Contact:

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Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1-PLR-105381-99

Date:

August 12, 1999

Legend

W =

X =

Y =

Z =

D1 =

D2 =

D3 =

This responds to your letter dated March 2, 1999, together with subsequent correspondence, written on behalf of X, requesting a ruling under section 1361 of the Internal Revenue Code and a ruling that X be given an extension of time to elect to treat Y as a Qualified Subchapter S Subsidiary (QSub) for federal tax purposes for its taxable year beginning D1.

Facts

X is a domestic corporation that elected to be taxed as a subchapter S corporation as of D1. From the period D1 to D2, X was a holding company for two wholly owned subsidiaries, Y, a corporation, and Z, an unincorporated entity. X intended that Y be a QSub. X, however, failed to file timely the Form 966 required to

PLR-105381-99

elect QSub status for Y. X learned of this failure to file timely a Form 966 electing QSub status for Y on or about D3.

On D2, X merged into Y, with Y surviving the merger under state law, and changing its name to W. W represents that the merger qualified as a reorganization under section 368(a)(1)(F) of the Code.

Law and Analysis

Qualified Subchapter S Subsidiary Election

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation which is not an ineligible corporation if (1) 100 percent of the stock of the corporation is owned by the S corporation, and (2) the S corporation elects to treat the corporation as a QSub. The statutory provision, however, does not provide guidance on the manner in which the QSub election is made or the effective date of the election.

Notice 97-4, 1997-1 C.B. 351, provides a temporary procedure for making a QSub election. Under Notice 97-4, a taxpayer makes a QSub election with respect to a subsidiary by filing a Form 966, subject to certain modifications, with the appropriate service center. The election may be effective on the date the Form 966 is filed or up to 75 days prior to the filing of the form, provided that the 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 election is in effect.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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. 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,

PLR-105381-99

and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(a).

S Corporation Election

Section 1361(a) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual.

Section 1362(d)(2) of the Code provides that an election under section 1362(a) is terminated whenever at any time on or after the first day of the first taxable year for which the corporation is an S corporation, the corporation ceases to be a small business corporation.

Rev. Rul. 64-250, 1964-2 C.B. 333, holds that a reorganization under section 368(a)(1)(F) did not cause a termination of an election under former section 1372, the predecessor to section 1362. In that revenue ruling, an electing small business corporation within the meaning of former section 1371(b) was reincorporated in another state through the corporation's shareholders organizing a new corporation in the other state and merging the existing corporation into the new corporation. The revenue ruling states that the surviving corporation also met the requirements for qualification as a small business corporation.

Conclusions

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat Y as a QSub effective D1.

In addition, provided that X elects to treat Y as a QSub for federal tax purposes effective D1, and provided that the merger of X into Y constitutes a reorganization under section 368(a)(1)(F) of the Code, we conclude the following:

(1) The reorganization under section 368(a)(1)(F) will not adversely affect X's status as an S corporation.

(2) Provided that W meets the requirements of a small business corporation under section 1361, X's election under section 1362(a) to be an S corporation will

PLR-105381-99

continue in effect and be applicable to W without the necessity of filing a new election on behalf of W.

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 as to whether the original election made by X to be an S corporation was a valid election under section 1362 and whether the merger transaction described above was a reorganization under section 368(a)(1)(F).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to W.

Sincerely,

Signed/Paul F. Kugler
Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

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

PLR-105381-99