

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1- PLR-114377-00

Date:

October 17, 2000

Legend:

X =

SUB1 =

SUB2 =

SUB3 =

A =

D1 =

D2 =

D3 =

D4 =

This responds to your authorized representative's letter dated July 17, 2000 requesting relief under section 1362(b)(5) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted, X was incorporated on D1 with A as its sole shareholder. Between D2 and D3, X incorporated SUB1, SUB2, and SUB3 as wholly-owned subsidiaries. It was intended that X would elect subchapter S status and qualified subchapter S subsidiary (Qsub) status for SUB1, SUB2, and SUB3 effective D4. However, the elections were never filed.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

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Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

However, section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSUB) as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSUB.

Section 1361(b)(3)(A) provides that generally a QSUB shall not be treated as a separate corporation, and that all assets, liabilities, and items of income, deduction, and credit of a QSUB shall be treated as assets, liabilities, and such items of the S corporation.

Section 1.1361-3(a)(2) of the Income Tax Regulations provides that an S corporation may elect to treat an eligible subsidiary as a QSUB by filing a completed form to be prescribed by the Service. Section 1.1361-3(a)(4) provides guidance on when a QSUB election will be effective.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing 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 preamble to the final QSUB regulations provides that taxpayers should continue to follow Notice 97-4 when making a QSUB election until the QSUB election form is published. Preamble to T.D. 8869, 2000-6 I.R.B. 498.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate

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that the Commissioner should grant relief when the taxpayer provides evidence proving 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 Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely S election and is eligible for relief under section 1362(b)(5). Accordingly if X makes an election to be an S corporation by filing with the appropriate Service Center within sixty (60) days following the date of this letter a completed Form 2553, containing an effective date of D4 for the election, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

We also conclude that good cause has been shown and the other requirements of sections 301.9100-1 and 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 elect to treat SUB1, SUB2, and SUB3 as QSUBs effective D4. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached to the election.

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 an S corporation or whether SUB1, SUB2, and SUB3 are QSUBs for federal tax purposes.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the 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 your authorized representative.

Sincerely,
PAUL F. KUGLER
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes