

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B03-PLR-106337-02

Date:

August 1, 2002

Legend

P =

Q =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear :

This letter responds to a letter dated January 29, 2002, submitted by your authorized representatives, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that P be granted an extension of time to elect to treat Q as a qualified subchapter S subsidiary, under § 1361(b)(3) of the Internal Revenue Code.

Facts

According to the information submitted, Q was formed on d1 for the purpose of carrying on a business. P was incorporated on d2 and made a valid election to be treated as a S Corporation under § 1362(a), effective for d3. On d2, P acquired all of the outstanding stock of Q.

P intended to elect to treat Q as a qualified subchapter S subsidiary under § 1361(b)(3) effective d3. However, due to inadvertence by P's tax advisers, the election was not filed timely.

Both P and Q are calendar year, accrual basis taxpayers. For the year ending d4, and for each successive year through d5, P filed a Form 1120S, U.S. Income Tax Return for an S Corporation. For tax years d4 through d5, P reported the assets, liabilities, and items of income, deduction, and credit of Q as the assets, liabilities, and items of income, deduction, and credit of P.

Law

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation. Section 1361(b)(3)(B) defines a qualified subchapter S subsidiary 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 qualified subchapter S subsidiary.

Section 1.1361-3(a) of the Income Tax Regulations prescribes the time and manner for making an election to be classified a qualified subchapter S subsidiary. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a qualified subchapter S subsidiary may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified Subchapter S Subsidiary.

Subsequent to the passage of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755, but prior to the effective date of § 1.1361-3, the procedure for electing qualified subchapter S subsidiary status was set forth in Notice 97-4, 1997-1 C.B. 351. Under that Notice, a qualified subchapter S subsidiary election was made by filing a Form 966, Corporate Dissolution or Liquidation, with the words "FILED PURSUANT TO NOTICE 97-4" printed at the top.

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 Code, except E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline 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 an election.

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

Conclusion

Based solely on the facts submitted and representations made, 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 60 days from the date of this letter to file Form 8869, Qualified Subchapter S Subsidiary, election with the appropriate service center to elect to treat Q as a qualified subchapter S subsidiary effective d3. A copy of this letter should be attached to the Form 8869.

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

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/

William P. O'Shea
Acting Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (3):
Copy for section 6110 purposes
Copies of this letter (2)

cc: