

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Refer Reply To:

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Date:

August 16, 2002

Legend

Company =

Q1 =

Q2 =

A =

B =

d1 =

d2 =

d3 =

Dear :

This letter responds to a letter dated December 27, 2001, and subsequent correspondence, submitted on behalf of P, 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 Q1 and Q2 as qualified subchapter S subsidiaries, effective d2 and d3, respectively.

Facts

According to the information submitted, Company was formed on d1. On that

date, A and B, the shareholders of Company elected S corporation status for Company. Next, A and B met with a tax professional and developed a plan to create several wholly owned subsidiary entities under Company.

On d2, Company formed Q1 for the purpose of carrying on certain aspects of Company's business operations. On d3, Company formed Q2 for the purpose of carrying on other aspects of Company's business operations. A and B intended that Company would elect, effective d2, to treat Q1 as a qualified subchapter S subsidiary under § 1361(b)(3) of the Internal Revenue Code. Similarly, A and B intended that Company would elect, effective d3, to treat Q2 as a qualified subchapter S subsidiary under § 1361(b)(3).

A and B hired another tax professional to prepare the proper forms for Company to elect qualified subchapter S subsidiary treatment under § 1361(b)(3). The tax professional inadvertently failed to file the proper forms to have Q1 and Q2 classified as Qualified Subchapter S Subsidiaries.

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) prescribes the time and manner for making an election to be classified a qualified subchapter S subsidiary. Section 1.1361-3(a)(4) of the Income Tax Regulations 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.

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.

Section 301.9100-3(a) provides 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.

Conclusion

Based on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Company is granted an extension of time of 60 days from the date of this letter to file a Form 8869, Qualified Subchapter S Subsidiary, for each of Q1 and Q2 electing to treat Q1 and Q2 as qualified subchapter S subsidiaries, effective d2 in the case of Q1 and effective d3 in the case of Q2. A copy of this letter should be attached to each 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/

Heather Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (3):

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

cc: