

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:Br.1-PLR-109969-99

Date:

August 11, 1999

Legend:

X =

Y =

D1 =

D2 =

D3 =

D4 =

State =

This responds to the letter dated April 20, 1999, submitted on behalf of X and Y, requesting relief under §1362(b)(5) of the Internal Revenue Code, as well as § 301.9100-3(a) of the Procedure and Administration Regulations.

FACTS

X was incorporated on D1 and made a valid S election on D2. On D3, the two shareholders of X formed Y, a corporation formed under the laws of State. At the request of a lender of X, Y was formed to hold the stock of X.

On D4, the shareholders transferred their stock in X to Y. The shareholders of Y desired that Y be treated as an S corporation effective D4, and, in connection with this

PLR-109969-99

intention, completed Form 2553 and relied on their attorneys to file the form. The S election was not timely filed. The shareholders were not counseled and were not aware of the need for Y to affirmatively elect to treat X as a QSUB.

LAW AND ANALYSIS

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

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

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

Y did not file a timely election to be treated as an S corporation under § 1362(a) effective on D4. Y has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362 (b)(5).

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation that 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. The statutory provisions do not, however, 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 parent corporation makes a QSUB election for a subsidiary by filing Form 966, with certain modifications, with the appropriate service center. The election may be effective for up to 75 days prior to the filing of that form, provided that date is not before the parent corporation'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 to be effective.

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 subtitles

PLR-109969-99

E, G, H, and I, if the taxpayer demonstrates 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 the government. Section 301.9100-1(b) defines the term “regulatory election” as including an election whose deadline is prescribed by a notice published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide 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 are 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, and provided that Y otherwise qualifies as a subchapter S corporation, we conclude that Y will be recognized as an S corporation effective on D4. Within 60 days from the date of this letter, Y should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Further, Y did not timely file an election to treat X as a QSUB, effective D4. However, we conclude that the standards of §§ 301.9100-1 and 301.9100-3 have been met. Therefore, Y is granted an extension to file a QSUB election for X, effective D4, until 60 days from the date of this letter. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached to such election.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

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

Sincerely,

PLR-109969-99

Signed/Paul F. Kugler

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

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