Internal Revenue Service

Index Number: 9100.00-00

Department of the Treasury

Washington, DC 20224

Person to Contact: 199909053

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1 PLR-117370-98
Date: DEC 3 1998

Legend

X =

Z =

State =

D1 =

D2 =

This responds to your letter dated August 21, 1998, written on behalf of X requesting that X be given an extension of time to elect to treat Z as a qualified subchapter S subsidiary (QSUB) under § 1361(b)(3)(B) of the Internal Revenue Code.

FACTS

X was incorporated under State law on D1. X is the sole shareholder of Z. Z was incorporated under State law on D2. X intended to elect to treat Z as a QSUB as of D2, but failed to timely file the election.

LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term "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 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 I.R.B. 24 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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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 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 the 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 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, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

CONCLUSION

In the present situation, the requirements of §§ 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 Z as a QSUB, effective D2. 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 specifically set forth above, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements or whether Z otherwise qualifies as a QSUB for federal tax purposes.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Paul F. Kugler

PAUL F. KUGLER
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
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