Internal Revenue Service

U.I.L. No.: 1362.00-00

Department of the Treasury

Washington, DC 20224

Contact Person:

199917067

Telephone Number:

In Reference to:
CC:DOM:P&SI:3 PLR-118228-98

Date:
January 29, 1999

Legend

Company =

Subsidiary =

State =

Shareholders =

a =

b =

Dear

This letter responds to a letter dated September 17, 1998, requesting rulings relating to Company's elections under §§ 1362(b)(5) and 1361(b)(3)(B) of the Internal Revenue Code.

Facts

The information submitted discloses that Company was incorporated on a under the laws of State. Company has several shareholders, including Shareholders. Company represents that it has intended to be an S corporation since its incorporation.

Company also has a wholly owned subsidiary, Subsidiary, which it acquired on b. Company also represents that it has intended Subsidiary to be treated as a qualified subchapter S subsidiary since b.

Issue 1

Company requests a ruling that its § 1362(a) election will

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

Section 1362(b) explains when an S election will be effective. Generally, 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 is made. Section 1362(b)(3) provides that if an S election is made after the first two and one half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year following the year in which the S election is made.

Section 1362(b)(5) provides that if no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Applying the relevant law to the facts submitted and representations made, we rule that Company's § 1362(a) election will be treated as timely made for its taxable year that begins on a. However, this ruling is contingent on Company filing Form 2553, Election by a Small Business Corporation, with an effective date of a, with the appropriate Service Center within 60 days from the date of this ruling. A copy of this letter should be attached to the Form 2553.

Issue 2

Company also requests a ruling that grants an extension of time for making the election under § 1361(b)(3)(B) to treat Subsidiary as a qualified subchapter S subsidiary.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) 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 QSSS. The statutory provision does not, however, provide guidance on the manner in which the QSSS election is made or the effective date of the election.

Notice 97-4, 1997-2 C.B. 351, provides a temporary procedure for making a QSSS election. Under Notice 97-4, a taxpayer makes a QSSS election for a subsidiary by filing Form 966, with certain modifications, with the appropriate Service Center. The election may be effective up to 75 days prior to the filing of the 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 QSSS for the entire period for which the retroactive election is to be effective.

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. 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).

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company is granted an extension of time for making the election to treat Subsidiary as a QSSS until 60 days following the date of this letter. Taxpayer should follow the procedures set forth in Notice 97-4 when making the election. A copy of this letter should be attached.

In summary, the late S election will be accepted with an effective date of a and the late QSSS election will be accepted with an effective date of b provided that the Form 2553, the Form 966, and a copy of this letter are filed together with the appropriate Service Center within 60 days from the date of this letter.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing facts. Specifically, we express no opinion on whether (1) Company otherwise qualifies as an S corporation, or (2) Subsidiary qualifies as a QSSS.

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

Sincerely yours,
(signed) Paul F. Kugler

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

Enclosure:
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