

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1 PLR-117168-98
Date:

Via Facsimile & First Class Mail

November 25, 1998

Legend

X =

Y =

Z =

D1 =

D2 =

This responds to your letter dated August 21, 1998, written on behalf of X, requesting a waiver of the five-year waiting period imposed by § 1361(b)(3)(D) of the Internal Revenue Code to permit X to make a Qualified Subchapter S Subsidiary (QSUB) election under § 1361(b).

FACTS

X and Y are unrelated corporations. Prior to D1, Z was a subsidiary of Y for which a QSUB election had been made. On D1, Y sold 100 percent of Z's outstanding stock to X. The sale of Z stock to X terminated Z's QSUB status. On D2, X filed a QSUB election with respect to Z, to be effective D1.

LAW AND ANALYSIS

Section 1361(b)(3)(A) provides that except as provided in regulations prescribed by the Secretary, for purposes of the Code (i) a corporation which is a QSUB shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSUB shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSUB 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.

Section 1361(b)(3)(C) provides that for purposes of the Code, if any corporation which was a QSUB ceases to meet the requirements of § 1361(b)(3)(B), the corporation shall be treated as a new corporation acquiring all of its assets (and assuming all of its liabilities) immediately before the cessation from the S corporation in exchange for its stock.

Section 1361(b)(3)(D) provides that if a corporation's status as a QSUB terminates, such corporation (and any successor corporation) shall not be eligible to make (i) an election under § 1361(b)(3)(ii) to be treated as a QSUB, or (ii) an election under § 1362(a) to be treated as an S corporation, before the 5th taxable year for which the termination was effective, unless the Secretary consents to the election.

In explaining § 1361(b)(3)(D), the Joint Committee on Taxation states as follows:

It is expected that the Secretary will provide waivers of the five-year rule in appropriate instances. For example, if the stock of the [QSUB] is distributed to the individual shareholders of the subsidiary's parent, the subsidiary will no longer be a [QSUB] and would be subject to the five-year rule. If the parent corporation retains its subchapter S election and the Secretary determines that the distribution was not made for tax avoidance, it would seem appropriate for the Secretary to waive the five-year rule.

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Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 104th Congress (JCS-12-96), 104th Cong., 2d Sess. 120 (1996).

CONCLUSIONS

Based solely on the facts submitted and the representations made, the Service waives the five-year waiting period imposed by § 1361(b)(3)(D) and consents to X's QSUB election under § 1361(b)(3)(ii) with respect to Z, effective D1, and thereafter unless otherwise terminated.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the 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,

signed/Daniel J. Coburn
Daniel J. Coburn
Assistant to the Branch Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
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