

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
August 25, 2000

Legend

Company =
Marital Trust =
Beneficiary =
D1 =

Dear

This letter responds to a letter received by us on June 19, 2000, requesting a ruling that the current income beneficiary, Beneficiary, of the Marital Trust be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to elect to treat the trust as a qualified subchapter S trust (QSST).

FACTS

According to the information submitted, stock of Company was transferred to the Marital Trust on D1. It is represented that on D1 and thereafter the Marital Trust qualified and was treated as a QSST, as defined by § 1361(d)(3) of the Internal Revenue Code. While intending that the Marital Trust be a QSST since D1, Beneficiary failed to make a timely QSST election. Because the Marital Trust was created under the terms of a will, the trust is a permitted S corporation shareholder for the 2-year period beginning on D1.

LAW AND ANALYSIS

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), the trust shall be treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of the trust shall be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply. An election under § 1361(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

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 an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-2 and 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, but does not apply to QSST 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.

CONCLUSIONS

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Beneficiary is granted an extension of time of thirty (30) days from the date of this letter to make an election to treat the Marital Trust as a QSST effective D1. The election should be made by following the procedure set forth in § 1.1361-1(j)(6), and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company is a valid S corporation or whether the Marital Trust is a valid QSST for federal tax purposes.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes