

Internal Revenue Service

Department of the Treasury

Number: **200120033**
Release Date: 5/18/2001
Index Number: 1361.05-00

Washington, DC 20224

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Date:
February 16, 2001

Legend

X =
Y =
State =
Country =
Year 1 =
Date 1 =

This responds to a letter dated July 27, 2000, and subsequent correspondence, submitted on behalf of X, requesting a determination concerning the eligibility of X to treat Y its wholly owned subsidiary as a Qualified Subchapter S Subsidiary (QSub) pursuant to section 1361(b)(3).

Facts

X is a privately held State corporation. Y, a Country corporation, is a wholly owned subsidiary of X. X represents that Y is maintained as a separate corporation solely for the purpose of complying with the laws of Country with respect to title and licensing requirements to operate in Country. Further, X represents that in Year 1, X elected under section 1504(d) to treat Y as a U.S. domestic corporation for U.S. federal income tax purposes. X has filed consolidated income tax returns for X and Y since Year 1.

X intends to file an election under section 1362(a) to be treated as an S corporation effective Date 1. In addition, X intends to elect to treat Y as a QSub pursuant to section 1361(b)(3)(B)(ii), effective the same date. X represents that X is eligible to elect to be treated as an S corporation.

Law and Analysis

Section 1361(a)(1) defines an S corporation as a small business corporation for which an election under section 1362(a) is in effect. Section 1361(b)(1) defines "small business corporation" as a domestic corporation that is not an ineligible corporation and

PLR-116127-00

that does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, other than a trust described in section 1361(c)(2), and other than an organization described in (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in section 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub. The QSub election is made by filing Form 8869. See Notice 2000-58, 2000-47 I.R.B. 491.

Section 1361(b)(3)(A) provides generally that a QSub shall not be treated as a separate corporation, and that all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items of the S corporation.

Section 1504(d) provides that “in the case of a domestic corporation owning or controlling, directly or indirectly, 100 percent of the capital stock . . . of a corporation organized under the laws of a contiguous foreign country and maintained solely for the purpose of complying with the laws of such country as to title and operation of property, such foreign corporation may, at the option of the domestic corporation, be treated for purposes of this subtitle as a domestic corporation.”

Conclusion

Based on the facts submitted and the representations made by X, we conclude that X is eligible to elect to treat Y as a QSub pursuant to section 1361(b)(3).

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. The rulings contained in this letter are predicated upon the facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the information, representations, and other data may be required as part of the audit process. See section 12.04 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, which discusses in greater detail the revocation or modification of ruling letters. However, when the criteria in section 12.05 of Rev. Proc. 2001-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances. Further, the above rulings are based upon X's representation that the section 1504(d) election made by X to treat Y as a domestic corporation is valid. No opinion is expressed as to the validity of the section 1504(d) election made by X to treat Y as a domestic corporation. In addition, no opinion is expressed concerning whether X is eligible to elect to be treated as an S corporation for federal tax purposes.

PLR-116127-00

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
/s/Matthew Lay
Assistant to the Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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