

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.

(Also Part 1, §§ 368, 1361; 1.1361-3, 1.1362-5.)

Rev. Proc. 2004-49

SECTION 1. PURPOSE

This revenue procedure provides a simplified procedure for a Qualified S Corporation, described in section 3.03 of this revenue procedure, to request relief for a late qualified subchapter S subsidiary (QSub) election for a Qualified Subsidiary, described in section 3.02 of this revenue procedure.

SECTION 2. BACKGROUND

Section 1361(b)(3)(B) of the Internal Revenue Code allows an S corporation to elect to treat a domestic corporation that is not an ineligible corporation (as defined in § 1361(b)(2)) as a QSub if 100 percent of the stock of the corporation is held by the S corporation. Under § 1361(b)(3)(A), a QSub is not treated as a separate corporation

and all assets, liabilities, and items of income, deduction, and credit of a QSub are treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1.1361-3(a) of the Income Tax Regulations generally provides the time and manner of making a QSub election. An S corporation makes a QSub election for an eligible subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the applicable service center. Under § 1.1361-3(a)(4), a QSub election cannot be effective more than 2 months and 15 days prior to the date of filing, and cannot be effective more than 12 months after the date of filing.

Situation 2 of Rev. Rul. 2004-85, published in this Internal Revenue Bulletin concludes that an election to treat a subsidiary as a QSub terminates if the S corporation transfers 100 percent of the QSub stock (whether by sale or reorganization under § 368(a)(1)(A), (C), or (D)), to another S corporation in a transaction that does not qualify as a reorganization under §368(a)(1)(F). In the interest of sound tax administration, the Treasury Department and the Internal Revenue Service believe that a simplified procedure for requesting relief for a late QSub election following a QSub termination as a result of transaction described in Situation 2 of Rev. Rul. 2004-85 is appropriate.

SECTION 3. SCOPE

.01 In General. This revenue procedure provides a simplified procedure for a Qualified S Corporation, described in section 3.03 of this revenue procedure, to obtain relief for a late QSub election for a Qualified Subsidiary, described in section 3.02 of this revenue procedure.

.02 Qualified Subsidiary. A corporation is a Qualified Subsidiary if:

(1) 100 percent of its stock was transferred by one S corporation to another S corporation in a sale or as part of a reorganization under § 368(a)(1)(A), (C), or (D), but not as part of a reorganization under § 368(a)(1)(F); and

(2) A QSub election was in effect for such corporation immediately prior to such transfer.

.03 Qualified S Corporation. An S corporation is a Qualified S Corporation with respect to a Qualified Subsidiary if the S corporation owns 100 percent of the stock of the Qualified Subsidiary immediately after the transaction described in section 3.02 of this revenue procedure.

SECTION 4. APPLICATION

.01 Prospective relief. A Qualified S Corporation may obtain relief for a late QSub election for a Qualified Subsidiary by attaching a completed Form 8869 to its timely filed return (including extensions) for the taxable year during which the transaction described in section 3.02(1) of this revenue procedure occurred. The Form 8869 must state at the top "FILED PURSUANT TO REV. PROC. 2004-49" and must specify as the effective date for the QSub election the date on which the transaction described in section 3.02(1) of this revenue procedure occurred.

.02 Alternative Relief. Revenue Procedure 2003-43, 2003-23 I.R.B. 998, provides alternative relief for late QSub elections that are not made within the period described in section 4.01 of this revenue procedure.

.03 Relief for Previous Transactions. Prior to August 16, 2004, a corporation may have participated in a transaction described in section 3.02(1) of this revenue procedure without knowing that the transaction required the making of a new QSub

election. An S corporation may obtain relief for a late QSub election with respect to such a transaction if it meets the following conditions:

(1) The late QSub election is made by a Qualified S Corporation for a Qualified Subsidiary that, prior to August 16, 2004, participated in a transaction described in section 3.02(1) of this revenue procedure;

(2) The Qualified Subsidiary failed to qualify as a QSub solely because the Qualified S Corporation did not file a Form 8869 for the Qualified Subsidiary that was effective as of the date of the transaction described in section 3.02(1) of this revenue procedure;

(3) The Qualified S Corporation reported its items on its return for the taxable year in which the transaction described in section 3.02(1) of this revenue procedure occurred, filed within 6 months of the due date for the return (excluding extensions) and on all other affected returns (if any), consistent with a timely QSub election having been made for the Qualified Subsidiary effective as of the date of the transaction described in section 3.02(1) of this revenue procedure;

(4) The Qualified S Corporation shareholders treated the Qualified Subsidiary as a QSub on their original returns for the taxable year during which the transaction described in section 3.02(1) of this revenue procedure occurred and on all other affected returns (if any);

(5) The Qualified S Corporation files a completed Form 8869 with the appropriate service center by August 16, 2005. The Form 8869 must state at the top "FILED PURSUANT TO REV. PROC. 2004-49" and must specify as the effective date for the QSub election the date on which the transaction described in section 3.02(1) of

this revenue procedure occurred.

.04 Relief by letter ruling. These procedures are in lieu of the letter ruling procedure that is used to obtain relief for a late election under § 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Accordingly, user fees do not apply to corrective action taken under this revenue procedure. An entity that is not eligible for relief under this revenue procedure, or is denied relief by the service center, may request relief by applying for a letter ruling. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2004-1, 2004-1 I.R.B. 1 (or its successor).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective on August 16, 2004.

DRAFTING INFORMATION

The principal author of this revenue procedure is Charles J. Langley, Jr. of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Langley at (202) 622-3060 (not a toll free call).