

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:

December 22, 2000

LEGEND:

X =

Y =

State =

Subs1 =

Sub 2 =

Subs3 =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear

This letter responds to your letter dated June 13, 2000, submitted on behalf of X and Y, requesting an extension of time to make an election under section 1361(b)(3)(B) of the Internal Revenue Code to treat Subs1, Sub 2, and Subs3 as qualified subchapter S subsidiaries (QSubs).

FACTS

X was incorporated under the laws of State on D1 and made an election under § 1362(a) to be treated as an S corporation effective D1. Subs1, Sub2, and Subs3 were formed on D2, D3, and D4, respectively, as wholly owned subsidiaries of X. X intended each of these subsidiaries to qualify as a QSub effective as of the date of each subsidiary's incorporation. The QSub elections, however, were not timely filed. On D5, all of X's stock was transferred to Y, which filed an election to treat X as a QSub.

LAW

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSub) as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub. The statutory provision does not, however, provide guidance on the manner in which the QSub election is made or the effective date of the election.

Under section 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 due date 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 a regulatory 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 section 301.9100-2.

Requests for relief under section 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).

CONCLUSION

In this case, it has been established that the requirements of sections 301.9100-1 and 301.9100-3 are satisfied. Consequently, an extension of 60 days from the date of this letter is granted for electing under section 1361(b)(3)(B) to treat Subs1, Sub2, and Subs3 as QSubs. A copy of this letter should be attached to the Form 8869, "Qualified Subchapter S Subsidiary Election", filed with the Service Center. A copy is enclosed for that purpose.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed regarding Y's eligibility to be an S corporation or the eligibility of any corporation to be a Qsub.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to section 6110(k)(3), this ruling may not be used or cited as precedent.

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

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