

## Internal Revenue Service

## Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:3 PLR-112412-99

Date:

November 2, 1999

Company:

Subsidiaries:

a:

This responds to your letter dated June 24, 1999 and received July 14, 1999, submitted on behalf of Company, requesting an extension of time for Company to elect under § 1361(b)(3)(B) of the Internal Revenue Code to treat Subsidiaries as qualified subchapter S subsidiaries (QSubs). Company represents the following facts.

On a, Company, an S corporation, acquired 100 percent of the outstanding stock of Subsidiaries, also S corporations. Taxpayer had intended to treat Subsidiaries as QSubs effective a. The Qsub elections, however, were not timely filed.

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.

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On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for the making of a QSub election. Under Notice 97-4, a parent S corporation makes a QSub election for a subsidiary by filing a Form 966, subject to certain specified modifications, with the appropriate service center. The election may be effective on the date Form 966 is filed or up to 75 days before the filing of the form, provided that date is not before the parent's first tax year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive election is in effect.

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 including an election whose deadline 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 § 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. Section 301.9100-3(a).

In this case, Company has established that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, Company is granted an extension of 60 days from the date of this letter for electing under § 1361(b)(3)(B) to treat Subsidiaries as QSubs. Taxpayer should follow the procedures of Notice 97-4 when making these elections. A copy of this letter should be attached.

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 Company's

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eligibility to be an S corporation or the eligibility of Subsidiaries to be QSubs.

In accordance with the power of attorney on file with this office, we are sending the original of this letter to you and a copy to Company.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 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: copy of this letter  
copy for § 6110 purposes