

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-112536-01

Date:

June 20, 2001

LEGEND:

X =

Y =

D1 =

Dear

This letter responds to a letter dated February 21, 2001, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B) of the Internal Revenue Code.

FACTS:

According to the information submitted, X elected to be an S corporation effective D1. X intended to treat its wholly owned subsidiary, Y, as a QSub effective D1. However, X inadvertently failed to timely file a QSub election for Y.

LAW & ANALYSIS:

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation which is not an ineligible corporation if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

In Notice 97-4, 1997-1 C.B. 351, the Internal Revenue Service prescribed temporary election procedures for an S corporation to elect QSub treatment for a subsidiary. These procedures included use of Form 966, Corporate Dissolution or Liquidation, to make the QSub election. In general, the election was effective on the date the Form 966 was filed or up to 75 days prior to the filing of the form.

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Effective January 20, 2000, final regulations (TD 8869, 2000-6 I.R.B. 498 [65 F.R. 3843]) were published relating to QSubs and other subsidiaries of S corporations. The final regulations provided that QSub elections shall be made by filing the form to be provided for that purpose. In the preamble to those final regulations, taxpayers were instructed to continue following the instructions in Notice 97-4 until a new QSub election form was available.

On November 20, 2000, in Notice 2000-58, 2000-47 I.R.B. 491, the Service announced that new Form 8869, Qualified Subchapter S Subsidiary Election, is available for an S corporation to elect to treat one or more of its eligible subsidiaries as a QSub. Section 1.1361-3(a)(4) provides that the election will be effective on the date specified on Form 8869 or on the date the election is filed if no date is specified. The effective date specified on the election cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing. Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 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 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. 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 to the satisfaction of the Commissioner 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:

Based on the facts presented and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is

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granted an extension of time to make an election to treat Y as a QSub effective D1, until 60 days following the date of this letter. The election should be made by filing Form 8869 with the appropriate Service Center. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Y is a valid QSub.

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.

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

Sincerely,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:

Copy for section 6110 purposes
Copy of this letter