

Internal Revenue Service

Department of the Treasury

Number: **200206026**

Washington, DC 20224

Release Date: 2/8/2002

Index Number: 1361.05-00; 9100.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B3 PLR-127060-00

Date:

November 7, 2001

Legend

Company =

Subsidiary =

D1 =

D2 =

D3 =

Dear

This letter responds to your letter submitted on behalf of Company, requesting an extension of time under section 301.9100-3 of the Procedure and Administration Regulations in which to elect to treat Subsidiary as a Qualified Subchapter S Subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was formed on D1 and elected subchapter S status on D2. Subsidiary is a domestic corporation formed on D3. Since its formation, Subsidiary has been a wholly-owned subsidiary of Company. It is represented that Company intended to file an election to treat Subsidiary as a QSub effective D3. The election, however, was not timely filed.

LAW AND ANALYSIS

Section 1361(b)(3)(B) provides that a QSub means any domestic corporation which is not an ineligible corporation if 100% of the stock of such corporation is held by the S corporation and the S corporation elects to treat such corporation as a QSub. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation. Section 1361(b)(3)(A).

A taxpayer makes a QSub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. Section 1.1361-3(a)(4) of the Income Tax Regulations provides that the election will be effective on the date specified on the election form 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 filing date.

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. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline 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 will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides an automatic extension of time for making certain elections, and § 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.

CONCLUSIONS

Based on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, an extension of time is granted, until 60 days following the date of this letter, to elect that Subsidiary be treated as a QSub effective D3. A copy of this letter should be attached to the Form 8869, QSub election, and filed with the appropriate Service Center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Section 301.9100-(a) provides that the granting of an extension of time for making an election is not determinative that the taxpayer is otherwise eligible to make the election.

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

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

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

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes