

## Internal Revenue Service

Department of the Treasury

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### **LEGEND:**

X =

Y =

Z =

A =

B =

D1 =

D2 =

D3 =

D4 =

This letter responds to your letter, dated September 9, 1999, written on behalf of X, requesting rulings under § 1362(b)(5) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations.

### **FACTS**

According to the information submitted, X was incorporated on D1 with A and B as its sole shareholders. X elected subchapter S status effective D2. Y and Z were incorporated on D3 and D4, respectively. All of Y's stock was issued to Z. Y and Z have not had any operations or taxable income since their incorporation.

On D4, pursuant to a plan of reorganization, A and B exchanged their stock in X for all of the stock in Z and As a result, Z became a holding corporation with X and Y as its wholly-owned subsidiaries and with A and B as its sole shareholders.

It was intended that Z would elect subchapter S status and qualified subchapter S subsidiary (QSub) status for X and Y effective D4. However, the elections were never filed.

### LAW

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. If an S election is made within the first two and one half months of a corporation's taxable year, then that corporation will be treated as an S corporation beginning the year in which the election is made. If an S election is made after the first two and one half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year.

Section 1361(b)(3)(B) provides that the term qualified subchapter S subsidiary means any domestic corporation which is not an ineligible corporation if 100 percent of the stock of such corporation is held by the S corporation and the S corporation elects to treat such corporation as a qualified subchapter S subsidiary.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for making a QSub election. Under Notice 97-4, a taxpayer makes a QSub election with respect to a subsidiary by filing a Form 966, subject to certain modifications, with the appropriate service center. The preamble to the final QSub regulations provides that taxpayers should continue to follow Notice 97-4 when making a QSub election until the new QSub election form is published. Preamble to T.D. 8869, 65 F.R. 3843, 3844 (January 25, 2000).

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form 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 the 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 sections 301.9100-1 and 301.9100-3 of this chapter.

Under § 301.9100-1(c), 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 301.9100-2 and 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 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.

### **CONCLUSION**

After applying the law to the facts submitted and the representations made, we conclude that Z has established reasonable cause for not making a timely S election and is eligible for relief under § 1362(b)(5). Accordingly, if Z makes an election to be an S corporation by filing with the appropriate Service Center within 60 days following the date of this letter a completed Form 2553, containing an effective date of D4 for the election, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

We also conclude that good cause has been shown and the other requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Z is granted an extension of time to make QSub elections for X and Y until sixty days following the date of this letter. A copy of this letter should be attached to the Form 966 filed with the Service Center for each 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 Z is an S corporation or whether X and Y are QSubs for federal tax purposes.

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.

Sincerely yours,

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2)  
Copy of this letter  
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