

INTERNAL REVENUE SERVICE
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Nov. 03, 1999

A =

B =

C =

X =

Y1 =

Y2 =

Y3 =

Y4 =

Y5 =

Y6 =

Y7 =

Y8 =

Y9 =

Y10 =

Y11 =

X1 =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to a letter dated June 28, 1999, and subsequent correspondence, submitted on X's behalf, requesting that X be given an extension of time in which to elect to treat each of Y1, Y2, Y3, Y4, Y5, Y6, Y7, Y8, Y9, Y10, and Y11 as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1. X filed its S corporation election effective for Date 1. The shareholders of Y1, Y2, Y3, Y4, Y5, Y6, Y7, Y8, Y9, Y10, and Y11 transferred their stock in those corporations to X in exchange for stock in X on Date 2. You, as the co-chairman on X's Board, represent that X intended to treat each of Y1, Y2, Y3, Y4, Y5, Y6, Y7, Y8, Y9, Y10, and Y11 as a QSub effective on Date 2. X relied on a tax professional to make the QSub elections. However, no Forms 966, Corporate Dissolution or Liquidation, were filed. X1 acquired all the stock of X on Date 3.

Section 1361(b)(3)(B) of the Code defines the term "qualified subchapter S subsidiary" (QSub) 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. 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.

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 taxpayer makes a QSub election with respect to a subsidiary by filing a Form 966 (Corporate Dissolution or Liquidation), subject to certain modifications, with the appropriate service center. The election may be effective on the date the Form 966 is filed or up to 75

days prior to the filing of the form, provided that the date is not before the parent's first taxable 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.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has the discretion to grant a reasonable extension of the time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines 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.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

In the present situation, the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time to make elections to treat Y1, Y2, Y3, Y4, Y5, Y6, Y7, Y8, Y9, Y10, and Y11 as QSubs, effective Date 2, until 60 days following the date of this letter. The elections should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached.

Except as specifically ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions of the Code, including whether X was a small business corporation under § 1361(b) of the Code and whether Y1, Y2, Y3, Y4, Y5, Y6, Y7, Y8, Y9, Y10, or Y11 otherwise qualify as QSubs for federal tax purposes.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes