

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1- PLR-120717-01

Date:

June 15, 2001

Legend:

P =

SUB1 =

SUB2 =

SUB3 =

SUB4 =

State =

D1 =

D2 =

This responds to your letter dated April 9, 2001 requesting that X be given an extension of time in which to elect to treat its subsidiaries as qualified subchapter S subsidiaries (QSubs) under section 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a State corporation which elected subchapter S status effective D1. On D2, X acquired 100 percent of the stock of corporations SUB1, SUB2, SUB3 and SUB4 (the "SUBS"). Each of the SUBS had previously elected to be treated as an S corporation. It was intended that X would elect QSub status for each of the SUBS effective D2. However, the elections were never filed.

LAW AND ANALYSIS

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Section 1361(b)(3)(B) of the Internal Revenue Code defines a QSub as a domestic corporation that 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.

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 QSubs. Section 1.1361-3(a)(4) of the Income Tax Regulations 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 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election to mean 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.

Requests for relief under section 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).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to elect to treat SUB1,

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SUB2, SUB3, and SUB4 as QSubs effective D2. 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 expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is an S corporation or whether SUB1, SUB2, SUB3, and SUB4 are QSubs for federal tax purposes.

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

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

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

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes