

## Internal Revenue Service

## Department of the Treasury

Index Number: 9100.00-00

Washington, DC 20224

Number: **200026014**

Person to Contact:

Release Date: 6/30/2000

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1- PLR-102422-00

Date:

March 29, 2000

### Legend:

Trust =

A =

P =

X =

Y =

Z =

State =

D1 =

D2 =

D3 =

D4 =

This responds to your request dated January 14, 2000, together with subsequent correspondence, that P be given an extension of time in which to elect to treat its

PLR-102422-00

subsidiaries as qualified subchapter S subsidiaries (QSUBs) under section 1361(b)(3) of the Internal Revenue Code.

### FACTS

According to the information submitted, X was incorporated under State law on D1 and elected subchapter S status effective D2. Y was incorporated under State law on D3 and elected subchapter S status effective D3. Prior to D4, the sole shareholder of X and Y was Trust. P represents that Trust is a grantor trust, all of which is treated as owned wholly by A under sections 671 through 679.

To consolidate business operations, Trust incorporated P on D4 and contributed all of its X and Y stock to P in exchange for P common stock. In addition, P incorporated Z on D4 and filed a valid QSUB election for Z effective D4.

P intended to treat X and Y as QSUBs effective D4; however, P inadvertently failed to file an election to treat X and Y as QSUBs. P later submitted a private letter ruling request, asking for an extension of time in which to elect to treat X and Y as QSUBs, effective D4, under sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations.

### LAW AND ANALYSIS

Section 1361(b)(3)(B) 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 the S corporation, and the S corporation elects to treat the corporation as a QSUB.

Section 1361(b)(3)(A) provides that generally a QSUB shall not be treated as a separate corporation, and that all assets, liabilities, and items of income, deduction, and credit of a QSUB shall be treated as assets, liabilities, and such items of the S corporation.

Section 1.1361-3(a)(2) of the Income Tax Regulations provides that an S corporation may elect to treat an eligible subsidiary as a QSUB by filing a completed form to be prescribed by the Service. Section 1.1361-3(a)(4) provides guidance on when a QSUB election will be effective.

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. T.D. 8869, 2000-6 I.R.B. 498, provides that taxpayers should continue to follow Notice 97-4 when making a QSUB election until the QSUB election form is published.

PLR-102422-00

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register or a notice published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards which the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving 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 Government.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly P is granted an extension of time of sixty (60) days from the date of this letter to elect to treat X and Y as QSUBs effective D4. The election should be made by following the procedure set forth in Notice 97-4. 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 P is an S corporation or whether X, Y, or Z is a QSUB 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.

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

Enclosures (2):  
Copy of this letter  
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