**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:
    Nov 18, 1999

Legend:

X      =


S1     =


S2     =


S3     =


S4     =


S5     =


S6     =


S7     =


S8     =


S9     =

S10   =


State =

D1    =

D2    =

D3    =

D4    =

D5    =




This responds to your letter dated October 18, 1999, submitted on behalf of X in which a ruling was requested that X be given an extension of time in which to elect to treat ten subsidiaries, S1, S2, S3, S4, S5, S6, S7, S8, S9, and S10 as qualified subchapter S subsidiaries (QSUBs) under section 1361(b)(3)(B) of the Internal Revenue Code.

## FACTS

S1, S2, S3, S4, S5, S6, S7, S8, S9, and S10 were incorporated under State law and are wholly owned subsidiaries of X, a subchapter S corporation. The stock of S1 and S2 was contributed to X on D1. The stock of S3 was contributed to X on D2. S4 and S5 first had shareholders on D3. S6 and S7 first had shareholders on D1. S8 first had shareholders on D4. S9 and S10 first had shareholders on D5. X intended to elect to treat S1, S2, S6, and S7 as QSUBs as of D1, S3 as a QSUB as of D2, S4 and S5 as QSUBs as of D3, S8 as a QSUB as of D4, and S9 and S10 as QSUBs as of D5, but X failed to timely file the elections.

## LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" 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. The statutory provision, however, does not 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 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 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.

Under section 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, 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.

Section 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 301.9100-1(a).

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 section 301.9100-2.

Requests for relief under section 301.900-3 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).

**CONCLUSIONS**

In the present situation, 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 make elections to treat S1, S2, S6, and S7 as QSUBs effective D1, S3 as a QSUB effective D2, S4 and S5 as QSUBs effective D3, S8 as a QSUB effective D4, and S9 and S10 as QSUBs effective D5. 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 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.

This ruling is directed only to the taxpayer(s) 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,

**Signed/Paul F. Kugler**

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

Enclosure (2)
  copy of this letter
  Copy for § 6110 purposes