

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
October 23, 2001

LEGEND

X =

Y =

Z =

Subs =

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d1 =

d2 =

d3 =

d4 =

d5 =

Dear

This letter responds to a letter dated May 15, 2001, and subsequent correspondence from your authorized representative on behalf of X, requesting an extension of time for X to elect to treat Y, Z and the Subs, as Qualified Subchapter S Subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on d1 under the laws of State and timely filed an election to be treated as an S corporation effective d2. As of d2, X owned all of the stock of Y and Z, and Z owns all of the stock of Sub1 through Sub35. Subsequent to d2, Z also acquired the stock of Sub36 (incorporated d3), Sub37 (incorporated d4), and Sub38 (incorporated d5).

A, the sole shareholder of X, intended to elect to treat Y, Z, and the Subs as QSubs under § 1361(b)(3). However, due to inadvertence, X failed to file the QSub elections.

LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term 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. The statutory provision does not, however, provide guidance on the manner in which the QSub election is made or on the effective date of the election.

Section 1.1361-3(a) of the Income Tax Regulations provides that except as provided in § 1361(d)(3)(D) and § 1.1361-5(c) (five-year prohibition on reelection), an S corporation may elect to treat an eligible subsidiary as a QSub by filing a completed Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. Generally, the election may be effective on the date the Form 8869 is filed or up to two months and 15 days prior to the filing of the form, provided that 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

relief is in effect. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation. If an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation.

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 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 regulation published in the Federal Register.

Sections 301.9100-1 through 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 § 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. Section 301.9100-3(a).

CONCLUSIONS

Based on the information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to file Forms 8869 to elect to treat Y, Z, and the Subs, as QSubs effective d2 (except for Sub36, Sub37, and Sub38, for which the elections will be effective on their respective dates of incorporation). A copy of this letter should be attached to each of the elections. In addition, Taxpayer is required to amend its tax returns for the tax year beginning d2 and for the tax years thereafter, in compliance with this letter ruling.

Except as specifically set forth above, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code.

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.

Under a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

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

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