

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:  
CC:PSI:B03-PLR-155917-01  
Date:  
June 25, 2002

**Legend**

P =

Q =

A =

d1 =

d2 =

d3 =

Dear :

This letter responds to a letter dated October 8, 2001, and subsequent correspondence, requesting a ruling under § 301.9100-3(a) of the Procedure and Administration Regulations that P be granted an extension of time to elect to treat Q as a qualified subchapter S subsidiary (QSub), effective d2.

Facts

According to the information submitted, P elected on d1 to be treated as a S Corporation under § 1362(a) of the Internal Revenue Code. On d2, P formed Q for the purpose of carrying on the business of A, an unrelated corporation that P intended to acquire. On d3, P caused Q to acquire all of the assets of A.

P intended to elect, effective d2, to treat Q as a QSub under § 1361(b)(3). However, the parties responsible for filing the election failed to designate which of the parties would file the election and inadvertently, the election was not filed timely.

### Law

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation.

Section 1361(b)(3)(B) defines a 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 1.1361-3(a) prescribes the time and manner for making an election to be classified a QSub. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a QSub may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed.

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. 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 301.9100-2 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.

Section 301.9100-3(a) provides 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.

### Conclusion

Based solely on the facts submitted and representations made , we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, P is granted an extension of time of 60 days from the date of this letter to file Form 8869, Qualified Subchapter S Subsidiary, with the appropriate service center to elect, effective d2, to treat Q as a QSub. A copy of this letter should be attached to the Form 8869.

Except for the specific rulings above, we neither express nor imply any opinion

concerning the federal income tax consequences of the facts of this case under any other provision of the Internal Revenue Code.

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

Sincerely,

/s/  
William P. O'Shea  
Acting Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (3):  
Copy for section 6110 purposes  
Copies of this letter (2)

cc