

**Internal Revenue Service**

Department of the Treasury

Number: **200303031**

Washington, DC 20224

Release Date: 1/17/03

Index Number: 9100.00-00; 1361.05-00;  
7701.00-00

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-144431-02

Date:

October 8 2002

Legend:

X =

Y =

Z =

Date 1 =

Date 2 =

Date 3 =

State =

Country =

Dear :

This letter is in response to your request, dated July 14, 2001, on behalf of X, requesting a ruling that X be granted an extension of time under section 301.9100 of the Procedure and Administration Regulations to file an election under section 1361(b)(3) of the Internal Revenue Code to treat Y as a qualified subchapter S subsidiary (QSub) and to file an election to treat Z as a disregarded entity for federal income tax purposes.

### Facts

According to the information submitted, X was incorporated on Date 1 in State. X elected to be treated as an S corporation by filing Form 2553, Election by a Small Business Corporation, effective as of Date 1.

In order to facilitate operations in Country, X adopted a plan to form both Y and Z. On Date 2, X incorporated Y under the laws of State. Shortly thereafter on Date 3, X, acting directly and through Y, formed Z under the laws of Country. Y has no operating functions and was formed merely to satisfy legal ownership requirements of Country. Z is an eligible entity that is not required to be classified as a corporation for U.S. federal tax purposes.

X did not wish to be treated as operating in Country through a corporation. Accordingly, X intended to elect to treat Y as a QSub effective Date 2. X also intended to elect for Z to be classified for U.S. federal tax purposes as other than an association effective on Date 3. X inadvertently failed to make valid timely elections to achieve such treatment, however, X believed that it had properly elected and has filed consistently with the intended treatment.

X represents that it has acted responsibly and in good faith, that granting relief will not prejudice the interests of the government, and that it is not using hindsight in making the elections.

### Law and Analysis

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

Section 1361(b)(3)(B) defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in section 1361(b)(2), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub. The election is made by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that the election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the form cannot be more than two (2) months and fifteen (15) days prior to the date of filing and cannot be more than twelve (12) months after the date of filing.

Section 301.7701-3(a) provides that a business entity that is not classified as a

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corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an “eligible entity”) can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified either as an entity disregarded as separate from its owner or as an association.

Section 301.7701-3(b)(2) provides guidance on the classification of a foreign entity for federal income tax purposes. Generally, a foreign eligible entity is treated as an association taxable as a corporation if all members have limited liability, unless the entity makes an election to be treated otherwise. If a foreign eligible entity has only one owner, it may elect to be treated as a disregarded entity pursuant to the rules in section 301.7701-3(c). Section 301.7701-3(c) provides that an entity classification election must be filed on Form 8832 and can be effective up to seventy-five (75) days prior to the date the form is filed or up to twelve (12) months after the date on which the form is filed.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of section 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.

Section 301.9100-3 sets forth the standards that 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 the Government.

### Conclusions

Based solely on the information submitted and the representations made, we conclude that X has satisfied the requirements of sections 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat Y as a QSub effective Date 1. X should make the election by filing a Form 8869 to the appropriate service center. A copy of this letter should be attached to that form and is included for that purpose.

In addition, X is also granted an extension of time for sixty (60) days from the date of this letter to elect to disregard Z as an entity separate from its owner for federal tax purposes, effective Date 3. X should make the election by filing a Form 8832 with the appropriate service center. A copy of this letter should be attached to that form and is included for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a

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valid S corporation or whether its subsidiary, Y, is a valid QSub. In addition, no opinion is expressed as to X's eligibility to request treatment as a disregarded entity for Z in accordance with section 301.7701.

These rulings are 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 will be sent to your representative.

Sincerely,

**/s/ Heather C. Maloy**

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter to be attached to the Form 8869

Copy of this letter to be attached to the Form 8832

Copy for section 6110 purposes