

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-151736-02

Date:

January 21, 2003

Legend

X =

Sub =

d1 =

d2 =

Dear :

This is in reply to a letter dated August 29, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting that the Service grant X an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Sub as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

The information submitted states that Sub is a corporation that elected to be an S corporation effective d1. X is a corporation that elected to be an S corporation effective as of its incorporation on d2. X acquired all of the shares of Sub on d2. X represents that X intended to treat Sub as a QSub effective d2. However, X inadvertently failed to timely file the proper election.

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 1.1361-3(a) of the Income Tax Regulations provides that an S corporation may elect to treat an eligible subsidiary as a QSub by filing the form prescribed by the IRS and that the election may be effective no more than two months and 15 days prior to the date of the filing. Notice 2000-58, 2000-2 C.B. 491, provides

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that Form 8869, Qualified Subchapter S Subsidiary Election, should be used to elect QSub treatment. 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.

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. 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). Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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.

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 for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub as a QSub effective d2. A copy of this letter should be attached to the Form 8869. A copy is included for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Sub is otherwise a valid QSub for federal tax purposes.

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

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Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

HEATHER C. MALOY  
Associate Chief Counsel  
(Passthroughs & Special Industries)

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