

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

January 13, 1999

**LEGEND:**

X =

Date 1 =

Date 2 =

Subsidiary =

Dear

This letter responds to your representative's request, dated September 4, 1998, that X be given an extension of time in which to elect to treat its subsidiary as a qualified subchapter S subsidiary (QSSS) under § 1361(b)(3)(B) of the Internal Revenue Code.

**FACTS**

X has been an S corporation since Date 1. X had intended to treat its wholly owned subsidiary, Subsidiary, as a QSSS effective beginning Date 2. However, an election to treat Subsidiary as a QSSS effective beginning Date 2 was not filed timely.

**LAW AND ANALYSIS**

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is held by the S corporation, and the S corporation elects to treat the corporation as a QSSS. The statutory provision does not, however, provide guidance on the manner in which the QSSS 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 the making of a QSSS election. Under Notice 97-4, a parent S corporation makes a QSSS election with respect to a subsidiary by filing a Form 966, subject to certain specified modifications, with the appropriate service center. The election may be effective on the date Form 966 is filed or up to 75 days prior to the filing of the form, provided that date is not before the effective date of § 1308 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755, and that the subsidiary otherwise qualifies as a QSSS for the entire period for which the retroactive election is in effect.

Under § 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.

Section 301.9100-1(b) defines the term "regulatory election" as 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 a regulatory 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.

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.

## **CONCLUSIONS**

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, X is granted an extension of time for making the election to treat Subsidiary as a QSSS with an effective date of Date 2, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is

an S corporation or whether X's Subsidiary is a QSSS 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.

Pursuant to a power of attorney on file with this office, copies of this letter are being forwarded to your authorized representatives.

Sincerely yours,

PAUL F. KUGLER  
Assistant Chief Counsel  
(Passthroughs and Special  
Industries)

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