

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:DOM:PSI:1- PLR-100874-01

Date:  
April 20, 2001

Legend:

X =

SUB1 =

SUB2 =

A =

B =

D1 =

:

This responds to your authorized representative's letter dated December 22, 2000 requesting relief under section 1362(b)(5) of the Internal Revenue Code and section 301.9100-3 of the Procedure and Administration Regulations.

**FACTS**

According to the information submitted, X was incorporated on D1 with A and B as its sole shareholders. SUB1, and SUB2 were incorporated as wholly-owned subsidiaries of X on D1. It was intended that X would elect subchapter S status and qualified subchapter S subsidiary (QSub) status for SUB1 and SUB2 effective D1. However, the elections were untimely, and the QSub elections were filed as subchapter S elections.

## LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

However, section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

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.

Section 1.1361-3(a)(2) provides that an S corporation may elect to treat an eligible subsidiary as a QSub by filing a completed form, signed by a person authorized to sign the S corporation's return. The election is made by filing Form 8869. Unless the election form provides otherwise, the election must be submitted to the service center where the subsidiary filed its most recent tax return (if applicable), and, if an S corporation forms a subsidiary and makes a valid QSub election for the subsidiary, the election should be submitted to the service center where the S corporation filed its most recent return. The QSub election may be made by the S corporation parent at any time during the taxable year. Section 1.1361-3(a)(3). Pursuant to section 1.1361-3(a)(4) a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the form cannot be more than two months and 15 days prior to the date of filing and cannot be more than 12 months after the date of filing.

Under section 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, 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.

PLR-100874-01

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 310.9100-2 provides automatic extensions of time for making certain elections, but does not apply to QSub elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of section 301.9100-2. Requests for relief under section 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 X has established reasonable cause for not making a timely S election and is eligible for relief under section 1362(b)(5). Accordingly if X makes an election to be an S corporation by filing with the appropriate Service Center within sixty (60) days following the date of this letter a completed Form 2553, containing an effective date of D1 for the election, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

We also conclude that good cause has been shown and the other requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. 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 SUB1 and SUB2 as QSubs effective Date 1. X should submit properly completed Forms 8869 to the relevant service center.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is an S corporation or whether SUB1 and SUB2 are QSubs for federal tax purposes.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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

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