

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-100914-01
Date:
April 25, 2001

Legend

X =

S1 =

S2 =

Industry Director =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This letter responds to a , and subsequent correspondence, written on behalf of X by its 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 two subsidiaries as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Code.

The information submitted states that X filed a Form 2553, Election to be a Small Business Corporation, with an effective date of D1. S1 and S2 filed elections to be treated as Small Business Corporations with an effective date of D2. On D3, all of the

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stock of S1 and S2 was contributed to X by the shareholders of those companies. At the time of the transfer, X's officers determined that both S1 and S2 should be treated as QSubs of X for federal income tax purposes. Due to inadvertence, the proper QSub elections for S1 and S2 were not filed by the due date.

Additionally, X represents that prior to discovering the miscommunication, X, S1 and S2 filed tax returns for the tax year beginning on D3, and ending on D4, as if the QSub elections had been timely filed. X's accountants discovered the error on D5.

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 held 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 the time and manner of making a QSub election. Section 1.1361-3(a)(4) provides that a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Notice 2000-58, 2000-47 I.R.B. 491, provides that Form 8869, Qualified Subchapter S Subsidiary Election, should be used by all S Corporations wishing to elect QSub treatment as directed in instructions to the form.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue 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 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-1(a).

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

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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 until 60 days from the date of this letter to file the Forms 8869 to elect to treat S1 and S2 as QSubs effective D3, with the appropriate service center. A copy of this letter and the elections should be sent to the Industry Director.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X otherwise was a valid S corporation or whether S1 and S2 are valid QSubs for federal tax purposes.

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

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 yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter