

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
CC:DOM:P&SI:3-PLR-118003-98  
Date:  
January 22, 1999

### Legend

X =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to your letter dated September 14, 1998, requesting an extension of time to file elections to treat A, B, and C as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3).

### **Facts**

X is an S corporation that owns and leases rental real estate. Before Date 1, X operated its leasing business through a tiered partnership structure. To facilitate refinancing of the rental properties, legal counsel for X (Counsel) recommended

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restructuring the tiered partnership arrangement so that the interests in each upper-tier partnership would be held by separate legal entities. Counsel recommended that X create new subsidiaries that would be treated as QSubs. X formed A and B on Date 1 and formed C on Date 2. X relied on Counsel for all aspects of the restructuring, including taking the necessary steps for A, B, and C to be treated as QSubs. Counsel did not advise X that elections would have to be made, and did not prepare or send Form 966 to X or to A, B, or C.

The failure to file Form 966 for each of the subsidiaries was discovered on or about Date 3, when X's tax advisor (not Counsel) asked X whether A, B, and C were QSubs and requested copies of the election forms. X was unaware that elections had not been made.

X represents that it has always intended for A, B, and C to be treated as QSubs since their formation. X has also submitted an affidavit signed by a member of Counsel stating that X asked Counsel to handle all matters necessary for treating A, B, and C as QSubs, but that Counsel failed to file the Forms 966 or advise X that elections must be filed.

## **Analysis**

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation that 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. The statutory provision does not, however, provide guidance on the manner in which the QSub election is made or the effective date of the election.

Notice 97-4, 1997-2 C.B. 351, provides a temporary procedure for making a QSub election. Under Notice 97-4, a taxpayer makes a QSub election for a subsidiary by filing Form 966, with certain modifications, with the appropriate Service Center. The election may be effective up to 75 days before the filing of the form, provided that date is not before the parent corporation's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive election is to be effective.

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 including an election whose due date is prescribed by a notice 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

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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.

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).

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Thus, X is granted an extension of time until 60 days following the date of this letter for making the elections to treat A, B, and C as QSubs effective Date 1 for A and B, and Date 2 for C. X should follow the procedures set forth in Notice 97-4 when making the elections. A copy of this letter should be attached.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing facts. Specifically, we express no opinion on whether (1) X otherwise qualifies as an S corporation, or (2) A, B, and C qualify as QSubs.

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

Under a power of attorney on file with this office, we are sending copies of this letter to your authorized representatives.

Sincerely,

Paul Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

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