

**Internal Revenue Service**

Department of the Treasury

Number: **200128030**  
Release Date: 7/13/2001  
Index Number: 1362.01-03; 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:1-PLR-103113-01  
Date:  
April 12, 2001

Legend:

A =

B =

C =

Date1 =

Date2 =

Date3 =

State =

This responds to the letter dated December 29, 2000, submitted by your representative on behalf of A, requesting an extension of time pursuant to §301.9100-3(a) of the Procedure and Administration Regulations to elect to treat two subsidiaries as qualified subchapter S subsidiaries (Qsubs) under section 1361(b)(3) of the Code.

**FACTS**

According to the information submitted, A was incorporated under State1 law on Date1 and is an S corporation. B was incorporated under State1 law on Date2 and is a wholly owned subsidiary of A. C was incorporated under State1 law on Date3 and is a wholly owned subsidiary of A. A intended to make a separate election for B and C to be treated as Qualified Subchapter S Subsidiaries (Qsubs), effective on each corporation's date of incorporation, but failed to timely make the elections.

### **LAW AND ANALYSIS**

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. The statutory provision does not, however, provide guidance on the manner in which the Qsub election is made or on the effective date of the election.

A taxpayer makes a Qsub election with respect to a subsidiary by filing a Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. 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. If the effective date specified on the form is for a date prior to the date that the form is filed, that date must not be before the parent's first taxable year beginning after December 31, 1996, and the subsidiary must otherwise qualify as a Qsub for the entire period for which the retroactive relief is in effect. 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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines a 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 Service Bulletin.

Sections 301.9100-1 through 301.9100-3 provide standards the Commissioner will use to determine whether to grant an extension of time to make an election. § 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.

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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. § 301.9100-3(a).

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, A is granted an extension of time for making the Qsub elections for B and C, effective on Date2 and Date3, respectively, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Form 8869. A copy of this letter should be attached to the election.

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.

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

Paul F. Kugler  
Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes