

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1-PLR-154787-01

Date:

November 2, 2001

### Legend:

A =

X =

Y =

D1 =

D2 =

D3 =

Dear Sir:

This responds to your letter dated September 28, 2001, submitted on behalf of X, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to elect to treat Y as a qualified S subsidiary (QSub) for federal tax purposes.

### Facts

According to the information submitted, X, an S corporation, was incorporated on D1. Y was incorporated on D2, and all of its outstanding shares were originally issued to A. On D3, A, the sole shareholder of X, contributed all shares of Y stock to X. As a result, X owns all outstanding shares of Y. X intended to treat Y as a QSub effective D3; however, X inadvertently failed to timely file the proper election.

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### Law and Analysis

Section 1361(b)(3)(B) of the Internal Revenue Code defines a QSub as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by an S corporation, and the S corporation elects to treat the corporation as a QSub.

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.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that the election will be effective on the date specified on the election form or on the date the election is filed if no date is specified. The effective date specified on the election 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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election as an election with a due date prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

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).

### Conclusion

Based solely on the facts submitted and the representations made we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. Accordingly, X is granted an extension of time of sixty (60) days from the date of this letter to elect to treat Y as QSub, effective as of D3. The election should be made by filing Form 8869 with the appropriate service center. 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. Specifically, no opinion is expressed concerning whether X is a valid S corporation or whether Y is valid QSub.

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.

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In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the requested tax representatives.

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

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

CC: