

**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-143783-02

Date:

December 20, 2002

Legend

X =

S =

State =

D1 =

Dear :

This letter responds to your letter dated August 6, 2002, submitted on behalf of X, requesting that the Service grant X an extension of time pursuant to § 301.9100 of the Procedure and Administration Regulations to elect to treat S as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code effective D1.

The information submitted states that S was incorporated under State law on D1, and was wholly owned by X, an S corporation. X represents that X intended to treat S as a QSub effective D1. However, the party responsible for filing the election inadvertently failed to timely file the proper election.

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

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election cannot be effective more than two months and 15 days prior to the date of filing.

A taxpayer makes a QSub election with respect to a subsidiary by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center.

Section 301.9100-1(c) 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 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 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.

Based solely on the information submitted and the representations made, we conclude that the requirements of § 301.9100-1 and § 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 a Form 8869 to elect to treat S as a QSub effective D1, with the appropriate service center. A copy of this letter should be attached to the Form 8869. A copy is enclosed for that purpose.

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 S is otherwise eligible to be a QSub for federal tax purposes.

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.

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Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X.

Sincerely,

Heather C. Maloy

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes