

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-162828-02

Date:

February 3, 2003

X =

Sub1 =

Sub2 =

D1 =

D2 =

D3 =

Dear :

This letter responds to your letter dated November 7, 2002, and subsequent correspondence, written on behalf of X, 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 Sub1 and Sub2 as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

The information submitted states that X is a corporation that elected to be an S corporation effective D1. X formed Sub1 as a wholly-owned subsidiary on D2 and formed Sub2 as a wholly-owned subsidiary on D3. X intended to treat Sub1 as a QSub effective D2 and Sub2 as a QSub effective D3. However, X inadvertently failed to timely file the proper elections.

Section 1362(a) provides that, except as provided in section 1362(g), a small business corporation may elect, in accordance with the provisions of section 1362, to be an S corporation.

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Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for such year.

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.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner for making the QSub 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.

Section 1.1361-3(a)(4) 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 form cannot be more than two (2) months and fifteen (15) days prior to the date of filing and cannot be more than twelve (12) months after the date of filing.

Under section 301.9100-1(c) 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 E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a regulation published in the Federal Register.

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 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).

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Based solely on the facts and the representations submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub1 as a QSub effective D2 and to elect to treat Sub2 as a QSub effective D3. A copy of this letter should be attached to the elections.

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 is a valid S corporation or whether Sub1 and Sub2 are otherwise valid QSubs 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.

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

Sincerely yours,

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes