

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-166243-02

Date:

April 23, 2003

Company:

Sub 1:

Sub 2:

Sub 3:

Sub 4:

Sub 5:

Sub 6:

Sub 7:

Sub 8:

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State:

a:

b:

c:

d:

e:

Dear \_\_\_\_\_ :

This letter responds to a letter dated November 19, 2002, from your authorized representative, as well as subsequent correspondence, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for Company to elect under § 1361(b)(3)(B) of the Internal Revenue Code to treat Subs 1-8 as qualified subchapter S subsidiaries (QSubs).

Company was incorporated on a under the laws of State and elected that same date under § 1362(a) to be treated as an S corporation. Company acquired all the stock of Subs 1-5 on a and formed Subs 6, 7, and 8 as wholly-owned subsidiaries on b, c, and d, respectively. The shareholders and management of Company intended that Subs 1-8 be treated as QSubs as of acquisition (Subs 1-5) or as of incorporation (Subs 6-8), but, inadvertently, QSub elections were not timely filed.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation that is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of such corporation is held 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 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.

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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 a regulatory 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).

Based on the facts submitted and the representations made, Company has established that the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied. Consequently, Company is granted an extension of 60 days from the date of this letter for electing under § 1361(b)(3)(B) to treat Subs 1-8 as QSubs. Within the extension period, Company must file Form 8869, effective a for Subs 1-5, b for Sub 6, c for Sub 7, and d for Sub 8, with the appropriate service center. A copy of this letter should be attached to the election.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

HEATHER C. MALOY  
Associate Chief Counsel  
(Passthroughs and Special Industries)

enclosures: Copy of this letter  
Copy for § 6110 purposes

cc: