

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-118216-03

Date:

June 3 2003

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to the letter dated March 10, 2003, and additional correspondence, submitted on behalf of X, requesting a ruling under §301.9100 of the Procedure and Administration Regulations.

Facts

X was organized in Date 1 and elected to be treated as an S corporation effective Date 2. On Date 3, X entered into a restructuring where X transferred all of its assets, subject to liabilities, to Y a wholly owned subsidiary. X intended to elect to treat Y as a "qualified subchapter S subsidiary" (QSub) under section 1361(b), effective Date 3, however, through inadvertence X did not timely file the appropriate form.

Law and Analysis

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.

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Section 1361(b)(3)(B) defines a QSub as any 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 parent S corporation 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 election may be effective on the date the Form 8869 is filed or up to two months and 15 days prior to the filing of the form, provided that date is not before the parent's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies 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.

Pursuant to §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 due date 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). 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).

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.

## Conclusion

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

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether the original election made by X to be treated as an S corporation was a valid election under section 1362 or whether Y is otherwise a valid QSub for federal tax purposes.

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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 forwarded to the taxpayer and the second listed authorized representative.

Sincerely,

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

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