

Internal Revenue Service

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-110908-00

Date:

September 15, 2000

X =

Y =

LLC =

A =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter dated April 24, 2000, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(b)(5) and requesting that X be given an extension of time in which to elect to treat its subsidiary as a qualified subchapter S subsidiary (QSUB).

The information submitted states that Y became an S corporation effective D1. A was the sole shareholder of Y. As part of a loan transaction, on D2, A transferred all of A's stock in Y to LLC. A, the president of Y, represents that A was the sole member of LLC. LLC did not elect to be treated as an association. Following the transfer of shares from A to LLC, A's attorney advised A that attorney believed that LLC was not an eligible S corporation shareholder. On D3, after receiving this advice, LLC transferred all of its stock in Y to a newly formed corporation, X. A is the sole shareholder of X. A, the president of X, represents that he intended for X to be an S corporation from its incorporation and that he relied on X's attorneys to coordinate any filings required for X to be an S corporation. Due to confusion between the attorneys, no Form

2553, Election by a Small Business Corporation, was timely prepared and filed for X for Year 1. Additionally, A intended for X to treat Y, now a wholly owned subsidiary of X, as a QSUB effective D3. However, X failed to timely file the proper election.

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

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 § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that a "small business corporation" cannot have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 301.7701-3(b)(1)(ii) of the Procedure and Administration Regulations states that, unless it elects otherwise, a domestic entity with a single owner is disregarded as an entity separate from its owner. Section 301.7701-3(a) defines an eligible entity as a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). Accordingly, the owner of the LLC is treated as owning the LLC's assets directly. Thus, in determining whether a corporation is eligible to elect S status or continue its eligibility as an S corporation, any shares held by a single member LLC are treated as being owned directly by the LLC's owner.

As single member LLCs are disregarded as entities separate from their owners for federal tax purposes, the transfer of shares to LLC did not terminate the S corporation election of Y.

Section 1362(b)(5) of the Code provides that if -- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable 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. The statutory provision does not, however, provide guidance on the manner in which the QSUB election is made or on the effective date of the

election.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for making a QSUB election. Under Notice 97-4, a taxpayer makes a QSUB election with respect to a subsidiary by filing a Form 966, subject to certain modifications, with the appropriate service center. The election may be effective on the date the Form 966 is filed or up to 75 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.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a notice 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 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).

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of sixty (60) days from the date of this letter to elect to treat Y as a QSUB effective D3. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter

should be attached to the election.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for X's first taxable year. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective for its Year 1 taxable year, within sixty (60) days following the date of this letter, then such election will be treated as timely made for X's Year 1 taxable year. A copy of this letter should be attached to the Form 2553.

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, including whether X was or is a small business corporation under § 1361(b) of the Code and whether Y was or is a QSUB for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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's authorized representative.

Sincerely yours,
Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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