

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
CC:PSI:B01  
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Date:  
May 14, 2008

Legend:

X =

A =

B =

D1 =

D2 =

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

This letter responds to the letter dated January 30, 2008, and related correspondence, written on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat A as a qualified subchapter S corporation (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code).

**FACTS**

The information submitted states that X is an S corporation for federal tax purposes. B is a QSub of X. B acquired all of the outstanding stock of A on D1. X

intended for A to be treated as a QSub, effective D2. However, due to inadvertence, X failed to timely file Form 8869, Qualified Subchapter S Subsidiary Election.

### **LAW AND ANALYSIS**

Section 1361(b)(3)(A) provides that, a QSub shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), in which 100 percent of the stock of such corporation is held by the S corporation, and the S corporation elects to treat such corporation as a QSub.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub election will be effective on the date specified on the election form or on the date the election form is filed if no date is specified. The effective date specified on the 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. A taxpayer makes a QSub election with respect to a subsidiary by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Under § 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 301.9100-2 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.

**CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to treat A as a QSub, effective D2. The election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X is a valid S corporation, or whether each A or B is eligible to be a QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being mailed to your authorized representative.

Sincerely,

/s/

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes

cc: