

Internal Revenue Service

Department of the Treasury

Number: **200206019**
Release Date: 2/8/2002
Index Number: 9100.31-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-132338-01

Date:

November 6, 2001

X =

Y =

Sub1 =

Sub2 =

Sub3 =

Sub4 =

Sub5 =

Sub6 =

Sub7 =

Sub8 =

D1 =

D2 =

D3 =

D4 =

Dear _____ :

This letter responds to your letter dated June 7, 2001, 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 some of its subsidiaries as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Code.

Facts

The information submitted states that X was incorporated on D1 and elected to be treated as an S corporation effective D2. Y was incorporated in D3 and was taxed as a C corporation. Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, Sub7, and Sub8, (the Subsidiaries) are wholly owned by Y. On D4, X became the sole shareholder of Y and elected to treat Y as a QSub effective D4. X also intended for the Subsidiaries to be treated as QSubs, starting on D4. However, X's accountant did not know that X must file separate QSub elections for the Subsidiaries in order for the Subsidiaries to qualify as QSubs. Therefore no QSub elections were filed for the Subsidiaries.

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

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 a domestic corporation, which is not an ineligible corporation, in which 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.

Section 1.1361-3(a) of the Income Tax Regulations provides the time and manner of making a 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 a QSub election cannot be effective more than two months and 15 days prior to the date of filing.

Section 1.1361-2(b) of the Income Tax Regulations provides that for purposes of satisfying the 100 percent stock ownership requirement in § 1361(b)(3)(B), stock of a corporation is treated as held by an S corporation if the S corporation is the owner of that stock for Federal income tax purposes.

Under section 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.

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 section 301-9100-2.

Requests for relief under section 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).

Conclusion

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 elect to treat each Subsidiary as a QSub effective D4. The elections should be made by filing properly executed Forms 8869 with the appropriate service center. 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 Y or the Subsidiaries are otherwise valid QSubs 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