

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

November 20, 2001

X =

Y =

Sub =

A =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

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

This letter responds to your letter dated May 22, 2001, and subsequent correspondence, written on behalf of Y, requesting extensions of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to make qualified subchapter S subsidiary (QSub) elections for Sub under § 1361(b)(3) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 and elected to be an S corporation effective D2. Y was incorporated on D3 and elected to be an S

corporation effective D4.

On D5 X acquired all the stock of Sub. X intended to elect to treat Sub as a QSub effective D6. However, due to inadvertence, a QSub election for Sub was not filed by the due date.

On D7 X was merged into Y, with Y surviving. After the merger, Y was the owner of all the stock of Sub. At the time of the merger, A was the sole shareholder of both X and Y. Following the merger, A was the sole shareholder of Y. Presuming that Sub was a QSub at the time of the merger, in order for Sub to remain a QSub, Y would have needed to file a QSub election effective D7. However, due to continued inadvertence, a QSub election for Sub was not filed by the due date.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" 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.

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. 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.

Section 1.1361-5(c)(1) provides that absent the Commissioner's consent, and except as provided in § 1.1361-5(c)(2), a corporation whose QSub election has terminated (or a successor corporation) may not make an S election or have a QSub election made with respect to it for five taxable years.

Section 1.1361-5(c)(2) provides that in the case of S and QSub elections effective after December 31, 1996, if a corporation's QSub election terminates, the corporation may, without requesting the Commissioner's consent, make an S election or have a QSub election made with respect to it before the expiration of the five-year period, provided that (i) immediately following the termination, the corporation (or its successor corporation) is otherwise eligible to make an S election or have a QSub election made for it; and (ii) the relevant election is made effective immediately following the termination of the QSub election.

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.

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.

Based solely on the facts and the representations submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Y, as the successor of X, is granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub as a QSub effective D6. A copy of this letter should be attached to the election. Y is also granted an extension of time for 60 days from the date of this letter to file a Form 8869 to elect to treat Sub as a QSub effective D7. A copy of this letter should be attached to the election.

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 Y is a valid S corporation or whether Sub is otherwise a valid 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 Y.

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

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