

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:2-PLR-117202-02  
Date:  
May 1, 2002

X =

Y =

State =

Date 1 =

Date 2 =

Year 1 =

Dear :

This responds to a letter dated March 8, 2002, submitted on behalf of X by its authorized representative, requesting an extension under §301.9100-3 of the Procedure and Administration Regulations for X to elect to be treated as an association taxable as a corporation for federal tax purposes and to elect to treat Y as a qualified subchapter S subsidiary (QSub), and also requesting relief under §1362(b)(5) of the Internal Revenue Code.

**FACTS**

The information submitted states that X was organized as a business trust under the laws of State on or about Date 1. On Date 2, the shareholders of Y, a pre-existing S corporation, contributed all of their shares in Y to X in exchange for ownership interests in X. The shareholders of X intended for X to elect to be treated as an association taxable as a corporation and then to elect to be treated as an S corporation, with both elections effective on Date 2. In addition, X intended to make a QSub election for Y, effective on Date 2. However, due to inadvertence, Form 8832, Entity Classification Election, was not timely filed for X, and a valid QSub election was not made with respect to Y. Form 2553, Election by a Small Business Corporation, was timely filed for X effective Date 1, however X did not have assets or shareholders, nor

did it begin doing business until Date2.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified either as an entity disregarded as separate from its owner or as an association.

Section 301.7701-3(b)(1) provides that an eligible entity with a single owner will be disregarded as an entity separate from its owner unless it elects otherwise.

Section 301.7701-3(c)(1)(i) allows an eligible entity to elect to change its classification by filing Form 8832, Entity Classification Election. Section 301.7701-3(c)(1)(iii) provides that all such elections become effective on the date specified by the entity on Form 8832 or on the date filed if no effective date is specified. The specified effective date must not be earlier than 75 days prior to the filing date of Form 8832, nor later than twelve months after the filing date.

Section 301.9100-1(c) gives the Commissioner discretion to grant reasonable extensions of time to make regulatory elections under the rules of sections 301.9100-2 and 301.9100-3. Under section 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3 sets forth the standards that the Commissioner uses to determine whether to grant a discretionary extension of time. These standards indicate that the Commissioner should grant relief when the taxpayer provides evidence proving to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 1362(a) provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides when an S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If an election is made after the first two and one-half months of a

corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) 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)(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.

## CONCLUSION

Based on the information submitted and the representations made, we conclude that the requirements of section §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 Form 8832 with the appropriate service center and elect under §301-7701-3(c) to be classified as an association taxable as corporation for federal tax purposes effective Date 2. A copy of this letter should be attached to that form. A copy has been enclosed for this purpose.

Additionally, X is granted an extension of time of 60 days from the date of this letter to file Form 8869 with the appropriate service center and elect under §1361(b)(3)(B) to treat Y as a QSub effective Date 2. A copy of this letter should be attached to Form 8869. A copy has been enclosed for this purpose.

We also conclude that X has established reasonable cause for failing to make a timely election to be an S corporation. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective on Date 2 within 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. A copy has been enclosed for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed concerning whether X was or is a small business corporation or whether Y was or is eligible to be a QSub.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Internal Revenue 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 each of X's authorized representatives.

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

Enclosures (4)  
3 Copies of this letter  
Copy for section 6110 purposes