

## 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-106165-03

Date:

May 27, 2003

### Legend

X =

Y =

Date 1 =

Date 2 =

Dear

This letter responds to a letter dated January 22, 2003, submitted on behalf of X, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

### Facts

The information submitted states that X is a corporation that elected to be an S corporation effective Date 1. X formed Y on Date 2. X represents that X intended to treat Y as a QSub effective Date 2. However, X inadvertently failed to timely file the proper election.

### Law and Analysis

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub. The election is made by filing Form 8869 with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that the election will be effective on the date specified on the election form or on the date the election 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.

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 subtitles E, G, H, and I.

Sections 301.9100-2 and 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, but does not apply to QSub 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 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 file a Form 8869 to elect to treat Y as a QSub effective Date 2. 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 X is a valid S corporation or whether Y is qualified to elect QSub status.

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

Sincerely,

Heather C. Maloy  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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