

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-151004-02

Date:

June 24, 2003

X =

Y =

d1 =

d2 =

d3 =

State 1 =

State 2 =

Dear :

This letter responds to a letter dated September 5, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to elect to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B) of the Internal Revenue Code.

According to the information submitted, X was incorporated in State 1 on d1, and elected to be an S corporation effective d1. Y was incorporated in State 2 on d2, and elected to be an S corporation effective d2.

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On d3, X acquired all the shares of Y stock and intended to treat Y as a QSub effective d3. However, X inadvertently failed to file timely the proper election.

Section 1361(b)(3)(B) provides that the term qualified subchapter S subsidiary means any domestic corporation that is not an ineligible corporation, as defined in § 1361(b)(2), if 100 percent of the stock of the corporation is held by the S corporation, and the S corporation elects to treat the subsidiary as a qualified subchapter S subsidiary.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a qualified subchapter S subsidiary 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.

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 Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) provides that a regulatory election includes an election whose due date 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 a regulatory 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 § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish 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.

Based on the information submitted and representations made, we conclude that X has satisfied the requirements of §§ 301.9100-1 and 301.9100-3. As a result, X is granted an extension of time of 60 days from the date of this letter to elect to treat Y as a QSub effective d3. A copy of this letter should be attached to the Form 8869, Qualified Subchapter S Subsidiary Election, filed with the service center. A copy is included for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal income tax consequences of any aspect of the transaction or item discussed 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 Y is a valid QSub.

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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, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: