

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200625022**

Release Date: 6/23/2006

Index Number: 9100.22-00, 1361.05-00

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-154095-05

Date: February 23, 2006

X =

Y =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to a letter dated October 20, 2005, written on behalf of X, requesting a ruling that the Service grant X an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to elect to treat Y as a qualified subchapter S subsidiary (QSub) effective Date 3 under § 1361(b)(3) of the Internal Revenue Code.

**FACTS**

According to the information submitted, X is a corporation that elected to be treated as an S corporation effective Date 1. X purchased all of the stock of Y on Date 2 and joined with the seller to make an election with respect to Y under § 338(h)(10). X intended to treat Y as a QSub, effective the following day on Date 3, but inadvertently failed to file the proper election.

## LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) generally 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)(B) defines a QSub as any domestic corporation that is not an ineligible corporation, if 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 for making the 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 1.1361-4(b)(4) provides that an S corporation that makes a qualified stock purchase of a target may make an election under § 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSub election with respect to the target. If an S corporation makes an election under § 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSub election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of § 338(h)(2)). If the QSub election is effective on the day after the acquisition date, the liquidation under § 1.1361-3(a)(2) occurs immediately after the deemed asset purchase by the new target corporation under § 338.

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 E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose deadline is prescribed by regulations 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 an election. Section 301.9100-2 provides automatic extension 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.

## CONCLUSION

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

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding whether X is a valid S corporation or whether Y is otherwise a valid QSub for federal tax purposes.

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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

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

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purpose