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CC:PSI:B03
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LEGEND

X =

Y =

Date1 =

Date2 =

Date3 =

State =

Dear :

This responds to a letter dated March 2, 2009, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make an election to treat Y as a qualified subchapter S corporation (QSub) under § 1361(b)(3) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X, a corporation under the laws of State, elected to be treated as an S corporation for federal tax purposes effective Date1. On or about

Date2, X purchased all of the outstanding stock of Y. X intended to treat Y as a QSub for federal tax purposes effective Date3. However, X failed to timely file the election.

LAW AND ANALYSIS

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of Title 26, (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) 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) provides that, for purposes of § 1361(b)(3), the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

A taxpayer makes a QSub election with respect to a subsidiary by filing Form 8869, Qualified Subchapter S Election, with the appropriate service center.

Section 1.1361-3(a)(4) of the Income Tax Regulations provides that a QSub 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.

Section 1.1361-3(a)(6) provides that an extension of time to make a QSub election may be available under the procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory 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 the 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 the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. 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 Date3. The election should be made by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described 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 eligible to be a QSub.

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

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for Section 6110 purposes

cc: