

## Internal Revenue Service

Department of the Treasury  
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PLR-137875-10  
Date:  
February 24, 2011

### Legend:

X =

Y =

State =

Date 1 =

Dear :

This responds to your letter dated July 27, 2010, and related correspondence, submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a late election on behalf of Y to be treated as a qualified subchapter S corporation (QSub) under § 1361(b)(3) of the Internal Revenue Code.

### FACTS

The information submitted states that Y was incorporated under the laws of State on Date 1. X represents that it is a subchapter S corporation which is the sole shareholder of Y. X intended that Y be treated as a QSub for federal tax purposes, effective Date 1. However, X did not timely file the requisite election. X reasonably relied on a qualified tax professional who failed to inform X of the need for 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.

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 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 an election. 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. 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 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 120 days from the date of this letter to elect to treat Y as a QSub, effective Date 1. 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) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being mailed to your authorized representative.

Sincerely,

Barbara J. Campbell

Barbara J. Campbell  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: