

Internal Revenue Service

Department of the Treasury

Index Number: 9100.00-00

Washington, DC 20224

Number: **199931025**
Release Date: 8/6/1999

Person to Contact:

Telephone Number:

Refer Reply To:
PLR-102428-99 CC:DOM:P&SI:3
Date:
May 7, 1999

LEGEND

Company =

Subsidiary =

State =

D1 =

D2 =

Dear

This letter responds to your letter dated January 18, 1999, written on behalf of Company, requesting a ruling that Company be granted an extension of time in which to elect to treat its subsidiary, Subsidiary, as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, Subsidiary was incorporated under the laws of State on D1. On D2, Subsidiary's two shareholders contributed all of Subsidiary's stock to Company, so that Subsidiary became a wholly owned subsidiary of Company as of that date. Company maintains that on D2 and thereafter, Subsidiary qualified to be a QSub as defined by § 1361(b)(3)(B). However, the Company failed to timely file the QSub 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 statutory provision, however, does not provide guidance on the manner in which the QSub election is made or the effective date of the election.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for making a QSub election. Under Notice 97-4, a taxpayer makes a QSub election with respect to a subsidiary by filing a Form 966, subject to certain modifications, with the appropriate service center. The election may be effective on the date the Form 966 is filed or up to 75 days prior to the filing of the form, provided that the date is not before the parent's first taxable year beginning after December 31, 1996, and that the subsidiary otherwise qualifies as a QSub for the entire period for which the retroactive election is in effect.

Under § 301.9100-1(c) of the Procedure and Administration Regulations, 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, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting the relief will not prejudice the interests of the government. Section 301.9100-(b) defines the term "regulatory election" as including an election whose deadline is prescribed by a notice published in the Internal Revenue Bulletin.

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.

CONCLUSIONS

In the present situation, based on the facts and representations submitted, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Company is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat Subsidiary as a QSub effective D2. The election should be made by following the procedure set forth in Notice 97-4 and a copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company or Subsidiary are valid S corporations or whether Subsidiary is a valid QSub for federal tax purposes.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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 yours,

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special
Industries)

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