

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-114979-01  
Date:

July 6, 2001

Legend

- Company =
- Subsidiary =
- State =
- Shareholder =
- a =

Dear

This letter responds to a letter dated February 26, 2001, and subsequent correspondence, requesting a ruling on behalf of Company under § 1362(b)(5) of the Internal Revenue Code and requesting an extension of time for Company to elect to treat Subsidiary as a qualified subchapter S subsidiary under § 1361(b)(3).

FACTS

According to the information submitted, Company was incorporated on a under the laws of State. Company has one shareholder, Shareholder. Subsidiary, a wholly owned subsidiary of Company, was also incorporated on a under the laws of State. It is represented that Company has intended to be an S corporation since a. However, Company discovered that its S election had not been timely filed. In addition, Company intended to treat Subsidiary, its wholly owned subsidiary, as a qualified subchapter S subsidiary ("QSub") effective a. However, Company failed to timely file the proper election.

LAW & ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, if an S election is made within the first two and one half months of a corporation's taxable year,

then that corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year following the year in which the S election is made.

Section 1362(b)(5) provides that if no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSub) as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of the corporation is held by an S corporation, and the S corporation elects to treat the corporation as a QSub. The statutory provision does not, however, provide guidance on the manner in which the QSub election is made or the effective date of the election.

A taxpayer makes a QSub election for a subsidiary by filing Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate Service Center. The election may be effective on the date the Form 8869 is filed or up to two months and 15 days prior to the filing of the form, provided that 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 relief is in effect. If a valid QSub election is made, the subsidiary is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation.

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. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin.

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.

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. Section

301.9100-3(a).

### CONCLUSIONS

Based on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S election for its taxable year that began on a. Accordingly, we conclude that Company's § 1362(a) election will be treated as timely made for its taxable year that began on a. However, this ruling is contingent on Company filing Form 2553, Election by a Small Business Corporation, with an effective date of a, with the appropriate Service Center within 60 days from the date of this ruling. A copy of this letter should be attached to the Form 2553.

In addition, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Consequently, Company is granted an extension of time of 60 days from the date of this letter to make an election to treat Subsidiary as a QSub effective a. A copy of this letter should be attached to the Form 8869 filed with the Service Center. 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 or implied concerning whether Company is a valid S corporation 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 Company's authorized representative.

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  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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

cc: