

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:1-PLR- 130877-01
Date:
July 23, 2001

X =

Y =

Date 1 =

Date 2 =

This letter responds to a letter dated May 7, 2001, written on behalf of X, requesting a ruling that X be granted an extension of time in which to elect to treat its first tier subsidiary, Y as a qualified subchapter S subsidiary (QSub).

FACTS

According to the information submitted, X was formed on Date 1. On Date 2, the shareholders of Y, a corporation, contributed 100% of their stock in Y to X. X elected to be treated as an S corporation effective Date 1. X intended to have Y treated as a QSub effective Date 2; however X inadvertently failed to timely file a QSub election for Y.

LAW AND ANALYSIS

Section 1361(b)(3)(B) of the Internal Revenue Code defines the term “qualified subchapter S subsidiary” as a domestic corporation which is not an ineligible corporation as defined in section 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 election is made by filing Form 8869, Qualified Subchapter S Subsidiary Election.

Under section 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 301.9100-1(b) defines the term “regulatory

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election” as including an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement 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 an election. Section 310.9100-2 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 section 301.9100-2. Requests for relief under section 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

Based solely on the facts submitted and the representations made, the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. As a result, X is granted an extension of time of sixty (60) days from the date of this letter to make an election to treat its wholly owned subsidiary Y as a QSub effective Date 2. X should submit the properly completed Form 8869 to the relevant service center. A copy of this letter should be attached to the Form 8869 filed with the service center.

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 X is a valid S corporation or whether its subsidiary Y is a valid QSub.

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.

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

Sincerely yours,
/s/ Paul F. Kugler
Associate Chief Counsel
(Passthroughs and Special Industries)

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