

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
August 17, 2001

LEGEND

- X =
- A =
- d1 =
- d2 =
- d3 =
- State =
- Sub1 =
- Sub2 =
- Sub3 =
- Sub4 =
- Sub5 =
- Sub6 =
- Sub7 =

Dear

This letter responds to your letter dated May 11, 2001, on behalf of X, requesting an extension of time under § 301.9100 of the Procedure and Administrative Regulations for X to elect to treat certain subsidiaries as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on d1 under the laws of State. The sole shareholder of X is A. On d1, X acquired the stock of Sub1, an S corporation. At the time of the acquisition, Sub1 owned all of the stock of Sub2. Sub1 had previously elected to treat Sub2 as a QSub. X made a timely election to treat Sub1 as a QSub, but X did not make a new QSub election with respect to Sub2.

On d2, X purchased the outstanding stock of Sub3, Sub4, Sub5, Sub6, Sub7 (collectively the New Subsidiaries), all of which are represented to be valid S

corporations as defined by § 1361(a)(1). X made a timely election under § 338(h)(10) with respect to the acquisition of the New Subsidiaries. X intended to elect to treat the New Subsidiaries as QSubs, but due to inadvertence, failed to make the elections.

LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term QSub as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the 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 on the effective date of the election.

Section 1.1361-3(a) of the Income Tax Regulations provides that except as provided in § 1361(d)(3)(D) and § 1.1361-5(c) (five-year prohibition on reelection), an S corporation may elect to treat an eligible subsidiary as a QSub by filing a completed Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center. Generally, 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. If an S corporation makes a valid QSub election with respect to a subsidiary, the subsidiary is deemed to have liquidated into the S corporation.

Section 1.1361-4(b)(4) provides that an S corporation that makes a qualified stock purchase of a target may make an election under § 338 with respect to the acquisition if it meets the requirements for the election, and may make a QSub election with respect to the target. If an S corporation makes an election under § 338 with respect to a subsidiary acquired in a qualified stock purchase, a QSub election made with respect to that subsidiary is not effective before the day after the acquisition date (within the meaning of § 338(h)(2)). If a QSub election is effective on the day after the acquisition date, the liquidation occurs immediately after the deemed asset purchase by the new target corporation under § 338.

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, 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 election" as including an election whose deadline 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 301.9100-1(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 information submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time of 60 days from the date of this letter to file Forms 8869 with the appropriate service center to elect to treat Sub2 as a QSub effective d1, and the New Subsidiaries as QSubs effective d3, the day after X purchased them pursuant to a § 338(h)(10) election. A copy of this letter should be attached to the elections.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

Under a power of attorney on file with this office, a copy of this letter will be sent to X.

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes