

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1 - PLR-137275-01

Date:

November 7, 2001

Legend:

X =

Y =

State =

D1 =

D2 =

**Dear** :

This responds to your representative's request dated June 11, 2001, together with subsequent correspondence, that X be given an extension of time in which to elect to treat its subsidiary as a qualified subchapter S subsidiary (QSub) under section 1361(b)(3) of the Internal Revenue Code.

**FACTS**

According to the information submitted, X was incorporated under State law on D1 and elected subchapter S status effective D1. On D2, X acquired Y, a corporation with an election under subchapter S in effect. X intended to treat Y as a QSub effective D2; however, X inadvertently failed to file an election to treat Y as a QSub.

**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, 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.

A taxpayer makes a QSub election by filing Form 8869, Qualified Subchapter S Subsidiary 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 Form 8869 or on the date the election is filed if no date is specified. The effective date specified on the election cannot be

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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 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in section 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a regulatory election to mean 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.

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. Section 301.9100-3(a).

#### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly X is granted an extension of time of sixty (60) days from the date of this letter to elect to treat Y as a QSub effective D2 by filing Form 8869 with the appropriate service center. A copy of this letter should be attached to the election filed with the service center.

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. Specifically, no opinion is expressed concerning whether X is an S corporation or whether Y is a QSub for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 sent to your authorized representative.

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

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