

Internal Revenue Service

Department of the Treasury

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Date:

August 25, 1999

X =

Y =

A =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to a letter dated May 12, 1999, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting that X be given an extension of time in which to treat Y as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B) of the Internal Revenue Code.

The information submitted states that Y was incorporated on D1, and since incorporation has been wholly owned by X, which elected to be an S corporation effective D4. A, as president of X and Y, represents that Y was intended to be a flow-through entity as of D2. X and Y relied on X's tax and accounting advisors to prepare the necessary form. Relying on erroneous information from X's chief financial officer that Y was wholly owned by A, the tax and accounting advisors mistakenly prepared a Form 2553, Election by a Small Business Corporation, for Y, rather than a Form 966, Corporate Dissolution or Liquidation. On D3, Y filed the Form 2553.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (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 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 the making of a QSub election. Under Notice 97-4, a taxpayer makes a QSub election with respect to a subsidiary by filing a Form 966, Corporate Dissolution or Liquidation, subject to certain modifications, with the appropriate service center. The election may be effective on the date 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.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has the discretion to grant a reasonable extension of time, under the rules set forth in §§ 301.9100-2 and 301.9100-3, to make a regulatory election. Section 301.9100-1(b) defines "regulatory election" as 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.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

In the present situation, the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time for making the election to treat Y as a QSub, effective D2, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of

the transactions described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is an S corporation or whether Y otherwise qualifies as a QSub for federal tax purposes.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

PAUL F. KUGLER
Assistant Chief Counsel
(Passthroughs &
Special Industries)

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