Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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CC:PSI:2 - PLR-111175-00
Date:
October 3, 2000

A =

X =

Y =

S1 =

S2 =

S3 =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Year 1 =

State =

Accountant1 =

Accountant2 =

Accountant3 =

Law Firm =

Dear :

This letter responds to a May 31, 2000, and subsequent correspondence, written on behalf of X by its authorized representative, requesting a ruling under § 1362(b)(5) and requesting that the Service grant X an extension of time

pursuant to § 301.9100-3 of the Procedure and Administration Regulations to elect to treat three subsidiaries as qualified subchapter S subsidiaries (QSUBs) under § 1361(b)(3) of the Code.

The information submitted states that X was incorporated under State law on D1. X filed a Form 2553, Election to be a Small Business Corporation, with an effective date of D1. However, A, as president of X, represents that as of D1, X did not yet have shareholders, operations, or assets, and had not begun doing business. A represents that X did not have assets, operations, or shareholders until D3. As X's Form 2553 was filed prior to D3, with an effective date of D1, no valid Form 2553 was timely filed on behalf of X effective for D3.

A represents that from X's inception, until the acquisition on D5 of all its stock, by Y, a C corporation, X was treated as an S corporation.

A represents that X is a holding company which was formed to hold the stock of three other corporations, S1, S2, and S3. A represents that the three corporations were S corporations. On D2, the majority shareholders of S1, S2, and S3 met with Accountant1 and Law firm to discuss reorganizing the three corporations. The majority shareholders decided to form X as a holding company. As of D3, X owned 100 percent of the stock of S1, S2, and S3. The new structure placed X as the parent and the three corporations, S1, S2, and S3, as the subsidiaries.

During these discussions, Accountant1 advised the shareholders that S corporations could own other S corporations. However, Accountant1 mistakenly advised the shareholders that as S1, S2, and S3 were already S corporations, only X would need to elect to be an S corporation in order for S1, S2, and S3 to become QSUBs. X intended for each subsidiary to be a QSUB effective D3. X relied on its advisors to tell them of the necessary elections. X's advisors failed to advise X of the necessity to file Form 966, Corporate Dissolution or Liquidation, properly modified, on behalf of the subsidiary corporations. Therefore, although the shareholders intended for each of the three corporations to be a qualified subchapter S subsidiary of X, no Form 966, properly modified, was filed on behalf of S1, S2, and S3.

Additionally, A represents that on D4, X terminated its relationship with Accountant1. At this point, Accountant2 became X's accountant. Accountant2 prepared separate 1120S returns for X and each subsidiary for Year 1. The subsidiaries each issued a Schedule K-1 to X. However, X mistakenly believed that its Year 1 Federal tax returns were accurately filed.

On D5, Y, a C corporation, acquired 100 percent of the outstanding stock of X. In D6, Accountant3, representing Y,

requested a copy of the QSUB elections for the subsidiaries. It was at this point that the shareholders of X learned that QSUB elections should have been filed on behalf of the subsidiaries of X. Additionally, during the course of preparing the paperwork for Y, Accountant3 discovered that the 1998 tax returns for X and its subsidiaries had not been filed properly.

A represents that X and S1, S2, and S3 will file amended returns for Year 1, reflecting the treatment of S1, S2, and S3 as QSUBs, rather than as separate S corporations.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1362(b)(5) of the Code provides that if -- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

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 on the effective date of the election.

A taxpayer makes a QSUB election with respect to a subsidiary by filing a 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 75 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 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 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 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).

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for X's first taxable year. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective for its first taxable year, within sixty (60) days following the date of this letter, then such election will be treated as timely made for D3. A copy of this letter should be attached to the Form 2553.

In addition, 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 for 60 days from the date of this letter to file a Form 8869 to elect to treat S1, S2, and S3 as QSUBS effective D3. A copy of this letter should be attached to the election.

Except as specifically set forth above, no opinion is expressed 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 otherwise was a valid S corporation or whether S1, S2, and S3 otherwise were valid QSUBs for federal tax purposes. As of D5, X will no longer be treated as an S corporation and its

subsidiaries will no longer be QSUBs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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
Associate Chief Counsel
(Passthroughs and Special Industries)

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