

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Refer Reply To:  
CC:PSI:3 PLR-168491-01  
Date:  
April 18, 2002

### LEGEND

X =  
Sub 1 =  
D1 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated December 7, 2001, and subsequent correspondence submitted on behalf of X, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for X to elect to treat Sub 1 as a Qualified Subchapter S Subsidiary (QSub) under § 1361(b)(3) of the Internal Revenue Code.

### FACTS

According to the information submitted, X made a valid election to be treated as a S Corporation under § 1362(a). Sub 1 is wholly owned by X. X intended to elect to treat Sub 1 as a QSub under § 1361(b)(3) effective D1. However, the QSub election inadvertently was not filed timely.

### LAW AND ANALYSIS

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation.

Section 1361(b)(3)(B) defines a 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.

Section 1.1361-3(a) prescribes the time and manner for making a QSub election. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a Qsub may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed.

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. 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 Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center to elect to treat Sub1 as a QSub effective D1. A copy of this letter should be attached to the election.

Except as specifically set forth above, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code. In particular, we express or imply no opinion as to whether X is an eligible S corporation and whether Sub1 is an eligible QSub.

This ruling is directed only to the taxpayer 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 your authorized representative.

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

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