Internal Revenue Service

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Department of the Treasury

LEGEND

Parent   =

d1   =

d2   =

Sub1   =

Sub2   =

Shareholders   =

Dear   :

This letter responds to your letter dated May 10, 2002, and subsequent correspondence on behalf of <u>Parent</u>, requesting relief under § 1362(b)(5) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations.

FACTS

According to the information submitted, <u>Parent</u> was incorporated on <u>d1</u>. <u>Parent</u> owns 100% of the stock of <u>Sub1</u> and <u>Sub2</u>. <u>Parent</u> is owned by the <u>Shareholders</u>. <u>Parent</u> acquired <u>Sub1</u> on <u>d1</u>, and acquired <u>Sub2</u> on <u>d2.</u>

<u>Parent</u> intended to elect S corporation status for itself and to elect to treat <u>Sub1</u> and <u>Sub 2</u> as qualified subchapter S subsidiaries (QSubs), but due to inadvertence none of the elections were filed timely.

LAW AND ANALYSIS

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

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

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.

A taxpayer makes a QSub election for a subsidiary by filing 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 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.

 Section 1.1361-3(a)(6) of the Income Tax Regulations provides that an extension of time to make a QSub election may be available under §§ 301.9100-1 and 301.9100-3.

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 facts submitted and representations made, we conclude that Parent has established reasonable cause for its failing to make a timely S election and that Parent is eligible for relief under § 1362(b)(5). Accordingly, if Parent makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of d1 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be

attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

Furthermore, we find that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, <u>Parent</u> is granted an extension of time of 60 days from the date of this letter to file Forms 8869 to elect to treat <u>Sub1</u> and <u>Sub2</u>, as QSubs, effective <u>d1</u> and <u>d2</u> respectively. A copy of this letter should be attached to each of the election. A copy is enclosed for that purpose.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

/s/
Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)