

Sub5 =

Sub6 =

Sub7 =

Sub8 =

Sub9 =

Sub10 =

Dear :

This letter responds to a letter, dated December 1, 2004, and subsequent correspondence by your authorized representative, requesting a ruling under § 301.91000-3(a) of the Procedure and Administration Regulations that X be granted an extension of time to treat Sub1, Sub2, Sub3, Sub4, Sub5, Sub6, Sub7, Sub8, Sub9, and Sub10 as qualified subchapter S subsidiaries (QSubs) under § 1361(b)(3) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a State law corporation formed on D1, and elected under § 1361 to be treated as an S corporation effective D2. On D3, the shareholders of Sub1, Sub2, Sub3, Sub4, and Sub5, contributed all of their stock in the aforementioned subsidiaries to X, in exchange for stock of X. On D4, X incorporated Sub6 as a wholly owned subsidiary. On D5, X incorporated Sub7 as a wholly owned subsidiary. Sub8, Sub9, and Sub10 are subsidiaries that were owned by X and part of its consolidated group before X filed its S election. X intended on electing to treat each of these as QSubs. However, due to inadvertence, none of the elections

were filed timely. X represents that it and the subsidiaries have filed its tax returns consistent with the treatment of the subsidiaries as QSubs.

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 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 qualified subchapter S subsidiary.

Section 1.1361-3(a) of the Income Tax Regulations prescribes the time and manner for making an election to be classified a qualified subchapter S subsidiary. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a qualified subchapter S subsidiary 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. The proper form for making the election is Form 8869, Qualified Subchapter S Subsidiary.

Subsequent to the passage of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755, but prior to the effective date of § 1.1361-3 of the Income Tax Regulations, the procedure for electing qualified subchapter S subsidiary status was set forth in Notice 97-4, 1997-1 C.B. 351. Under that Notice, a qualified subchapter S subsidiary election was made by filing a Form 966, Corporate Dissolution or Liquidation, with the words "FILED PURSUANT TO NOTICE 97-4" printed at the top.

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 Notice or by a regulation published in the Federal Register.

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

Section 301.9100-3 sets forth 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.

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that the requirements of § 301.9100 have been satisfied. Accordingly, X is granted an extension of time of 60 days from the date of this letter to file Forms 8869, Qualified Subchapter S Subsidiary Elections, with the appropriate service center to elect to treat the following corporations as QSubs: Sub1, Sub2, Sub3, Sub4, Sub5, effective D3; Sub6 effective D4; Sub7 effective D5; Sub8, Sub9 and Sub10 effective D2.

Except for the specific rulings above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Internal Revenue Code. 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.

Sincerely,

/s/

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