Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

199901020

Contact Person:

CC:DOM:P&SI:2 - PLR-113745-98

Date: OCT 7 1998

X =

L =

M =

N =

D1 =

D2 =

A =

Accounting Firm =

Law Firm =

Dear

This responds to your June 30, 1998, letter requesting that the Service grant X an extension of time under § 301.9100 of the Procedure and Administration Regulations to elect to treat L, M, and N as qualified subchapter S subsidiaries under § 1361(b)(3)(B) of the Internal Revenue Code.

The information submitted states that X, L, M, and N were incorporated on D1. Each of the four corporations elected under § 1362(a) to be an S corporation beginning on D1.

On D2, X acquired all of the outstanding stock of L, M, and N. A, as Vice President of X, represents that X, L, M, and N intended L, M, and N to continue to be governed by subchapter S after the stock acquisition. However, Accounting Firm and Law Firm, upon whom L, M, and N relied for tax advice, failed to advise them that X needed to file elections to treat L, M, and N as qualified subchapter S subsidiaries.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) as a domestic corporation that is not an ineligible corporation, if 100 percent of the stock of such corporation is held by an S corporation, and the S corporation elects to treat such corporation as a QSSS. The statutory provision does not provide guidance regarding the manner in which the QSSS election is to be made or the effective date of the election.

Notice 97-4, 1997-1 C.B. 351, provides a temporary procedure for making a QSSS election. Under Notice 97-4, a taxpayer makes a QSSS 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 the Form 966 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 QSSS 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 the 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 case the requirements of § 301.9100-3 have been satisfied. Consequently, X is granted an extension of time, until 30 days following the date of this letter, to elect to treat L, M, and N as QSSSs effective D2 . The elections should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached to the Form 966.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is an S corporation or whether L, M, or N otherwise qualify as QSSSs for federal tax purposes.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(j)(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 forwarded to X.

Sincerely yours,

Paul F. Kugler

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

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