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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-PLR-109763-99
Date: JUN 30 1999

Legend

X =

Y =

D1 =

D2 =

D3 =

D4 =

This responds to your representative's letter dated May 17, 1999, written on behalf of X, requesting a ruling that X be given an extension of time to elect to treat Y as a Qualified Subchapter S Subsidiary (QSUB) for federal tax purposes for its taxable year beginning D1.

FACTS

X is a domestic corporation that elected to be taxed as a subchapter S corporation as of D2. Y is a domestic corporation formed D3, that elected to be taxed as a subchapter S corporation as of that date. On D1, the owners of Y contributed all of

Y's stock to X. Although X intended that Y be a QSUB as of D1, X, failed to elect timely QSUB status for Y as of D1. X learned of this failure during D4.

LAW AND ANALYSIS

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" as a domestic corporation which is not an ineligible corporation if (1) 100 percent of the stock of the corporation is owned by the S corporation, and (2) the S corporation elects to treat the corporation as a QSUB. The statutory provision, however, does not provide guidance on the manner in which the QSUB election is made or the effective date of the election.

Notice 97-4, 1997-1 I.R.B. 24 provides a temporary procedure for making a QSUB election. Under Notice 97-4, a taxpayer makes a QSUB election with respect to a subsidiary by filing a Form 966, 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 the 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 election is in effect.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in § 301.9100-3 to make a regulatory election. Section 301.9100-1(b) defines a 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.

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 solely on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. As a result, X is granted an extension of time to elect to treat Y as a QSUB as of D1. X has until 60 days from the date of this letter to file Form 966 with the applicable service center to elect to treat Y as a QSUB for federal tax purposes as of D1.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning X's or Y's status as subchapter S corporations.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Paul F. Kugler

Paul F. Kugler
Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

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