

INTERNAL REVENUE SERVICE
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November 13, 1998

Company =

Subsidiary =

Date 1 =

A =

Dear :

This letter responds to your July 16, 1998 ruling request, submitted on behalf of Company, concerning whether Company may be given an extension of time in which to elect to treat Subsidiary as a qualified subchapter S subsidiary (QSSS) under § 1361(b)(3)(B) of the Internal Revenue Code.

The information submitted states that Company is an S corporation. On Date 1, Subsidiary was incorporated and issued shares, all of which are treated as owned by Company. A, Company's Controller, represents that Company intended that Subsidiary become a QSSS effective Date 1 and that Subsidiary otherwise was eligible to be a QSSS effective Date 1 and at all times thereafter. However, an election to treat Subsidiary as a QSSS was not filed.

Section 1361(b)(3)(B) defines the term "qualified subchapter S subsidiary" (QSSS) 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 QSSS. The statutory provision does not, however, provide guidance on the manner in which the QSSS election is made or the effective date of the election.

On January 13, 1997, the Service published Notice 97-4, 1997-1 C.B. 351, providing a temporary procedure for the making of 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 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 situation, the requirements of § 301.9100-3 have been satisfied. As a result, Company is granted an extension of time for making the election to treat Subsidiary as a QSSS, effective Date 1, until 60 days following the date of this letter. The election should be made by following the procedure set forth in Notice 97-4. A copy of this letter should be attached.

Except as specifically set forth above, we neither express nor imply any opinion as to the federal income tax consequences of the transactions described above nor related transactions under any other provision of the Code. Specifically, we express no opinion concerning the formation or merger of any entity or concerning Company's and Subsidiary's status as an S corporation and QSSS, respectively.

This ruling is directed only to the taxpayer on whose behalf it was requested. 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 forwarded to Company.

Sincerely yours,

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

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