

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:3 – PLR-121855-98

Date:

June 2, 1999

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Dear

This letter responds to a letter dated November 23, 1998, requesting a ruling under section 1362(b)(5) of the Code that X's S corporation election will be effective as of Date 2.

Facts

X represents the following facts. X was incorporated on Date 1. The shareholders of X, A and B, wanted X to be treated as an S corporation effective Date 2. However, the Form 2553, Election by a Small Business Corporation, was not timely filed.

X requests a ruling that it will be recognized as an S corporation beginning Date 2.

Analysis

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

Section 1362(b) governs the effective date of an S election. If an S election is made within the first two and one half months of a corporation's taxable year, then that corporation will be treated as an S corporation beginning the year in which the election is made. If an S election is made after the first two and one half months of a corporation's taxable year, then that 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 no section 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year.

Conclusion

Based solely on the facts and representations submitted, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). Accordingly, provided X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of Date 2 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.

Except as specifically set forth above, we express no opinion concerning

the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

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

Sincerely,

Donna M. Young
Senior Technician Reviewer, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes