

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:

February 14, 2005

LEGEND

X =

Shareholder =

State =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter from your authorized representative dated October 26, 2004, and subsequent correspondence, requesting a ruling under ' 1362(b)(5) of the Internal Revenue Code (regarding a late S corporation election and an accompanying fiscal year election under § 444).

FACTS

According to the information submitted, X was incorporated under State law on D1. X's shareholder, Shareholder, intended for X to be an S corporation beginning D2,

when X began business operations, with a fiscal year ending D3. Accordingly, X and its shareholder filed their income tax returns for X's first taxable year and all subsequent taxable years consistent with X being an S corporation. However, X's Form 2553, Election by a Small Business Corporation, with an accompanying § 444 election, was not timely filed.

X requests a ruling under § 1362(b)(5) that its S corporation election, with an accompanying § 444 election for a fiscal year ending D3, will be treated as timely made for X's taxable year beginning on D2.

LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, 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 for the year in which the election is made. Section 1362(b)(3) provides that 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 following the year in which the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the taxable year and § 1362(b)(3) shall not apply.

Section 444(a) provides that except as otherwise provided in § 444, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

Section 1.444-3T(b)(1) of the Temporary Income Tax Regulations provides a § 444 election shall be made by filing a properly prepared Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, with the Service Center indicated by the instructions to Form 8716. Except as provided in § 1.444-3T(b)(2) and (4), Form 8716 must be filed the earlier of (i) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will be first effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the § 444 election.

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for its failure to make a timely S corporation election, and that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective D2, within 60 days following the date of this letter, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. Moreover, X, if qualified, may elect under § 444 to have a fiscal year ending D3 by indicating that intention on Form 2553 and attaching a completed Form 8716. For each year that a § 444 election is in effect, X must file a return on Form 8752, Required Payment or Refund Under § 7519, as provided by § 1.7519-2T(a)(2), and make any payments required by § 1.7519-2T.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation or is eligible to make a § 444 election for federal tax purposes.

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

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.

Sincerely,

/s/

JAMES A. QUINN
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: