Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

199917074

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1 PLR-100494-99
Date:
Jauary 28, 1999

Legend

X =

State =

D1 =

D2 =

This responds to your letter dated December 30, 1998, submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on D1. X's shareholder intended that X be a subchapter S corporation, effective D2; however, an S corporation election under § 1362 was not timely filed.

LAW AND ANALYSIS

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

Section 1362(b) provides the rule on when an S election will be effective. 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. 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: (1) no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for the taxable year and effective as of the first day of its tax year.

X's S corporation election was not filed timely for the election to be effective for the taxable year beginning D2. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSION

Based solely on the facts submitted and representations made and assuming that X otherwise qualifies as a subchapter S corporation as of D2, we conclude that X will be recognized as an S corporation effective as of D2. X should file a completed Form 2553 (with a copy of this ruling attached) reflecting its election of subchapter S corporation status as of D2 with the applicable service center within 60 days of the date of this letter.

Except as specifically set forth above, no opinion is expressed 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 otherwise satisfies the S corporation eligibility requirements.

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 the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Signed/Daniel J. Coburn
Daniel J. Coburn
Assistant to the Branch Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

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

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