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Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1 - PLR-114546-99
Date:
SEP 14 1999

Legend:

X =

State =

D1 =

This responds to your letter dated August 20,1999, submitted on behalf of X requesting relief under section 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on D1. The shareholder of X intended that X elect to be treated as an S corporation for federal tax law purposes effective D1. However, the election to be treated as an S corporation was not timely filed.

LAW AND ANALYSIS

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

Section 1362(b) provides when an S election becomes 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

197

was made. If an election is made after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

However, section 1362(b)(5) provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determines reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as timely made for that taxable year and effective as of the first day of that taxable year.

In the present case, X failed to timely elect S corporation treatment effective D1. However, X has established reasonable cause for not making a timely election and is thus entitled to relief under section 1362(b)(5).

CONCLUSION

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective D1. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

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.

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

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

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.

Sincerely,

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

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

199