Internal Revenue Service

Index No.: 1362.00-00

Department of the Treasury

Washington, DC 20224

199901012

Contact Person:

Telephone Number:

In Reference to:

CC:DOM:P&SI:1 PLR- 112662-98

Date: SEP 30 1998

LEGEND

X =

Date 1 =

This responds to a letter submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on Date 1. The shareholders desired that X elect S corporation treatment, effective Date 1, but the election was not timely filed. X requests a ruling that it will be treated as an S corporation effective Date 1.

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. Section 1362(b)(2) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), however, 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 filed.

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 such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

X did not file a timely election to be treated as an S corporation under § 1362(a) effective on Date 1. X has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362(b)(5).

CONCLUSION

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective Date 1. Within sixty (60) days of the date of this letter, please submit a copy of this letter and a copy of a signed Form 2553, with Date 1 entered as the effective date, to the relevant service center.

Temporary or final regulations pertaining to the issue addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 98-1, 1998-1 I.R.B. 7. However, when the criteria in section 12.05 of Rev. Proc. 98-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code.

Sincerely yours,

Dianna K. Miosi

DIANNA K. MIOSI
Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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