Internal Revenue Service

Department of the Treasury

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

199901035

UIL 1362.00-00

Person to Contact:

Telephone Number:

Refer Reply to:

CC:DOM:P&SI:7--PLR-115464-98

Date:
SEP 30 1998

Re:

Legend:

X:

A:

B:

date 1:

Dear

We received your representative's letter, dated , submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code. This letter responds to that request.

The represented facts are as follows: X was incorporated on date 1. A and B, the shareholders of X, intended X to be an S corporation effective date 1, but Form 2553, Election by a Small Business Corporation, was not filed timely. Accordingly, X requests a ruling that it will be treated as an S corporation effective date 1.

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

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). X has established, however, reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

Based solely on the facts and representations made in X's submission, and provided that X otherwise qualifies as an S corporation as of date 1, we conclude that X will be treated as an S corporation effective as of date 1. Please submit a completed Form 2553 along with a copy of this letter to the relevant Service Center within 60 days of receipt of this letter.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the above-described facts under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X qualifies as an S corporation for federal tax purposes.

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.

Sincerely yours,

Joseph H. Makurath
Senior Technician Reviewer,
Branch 7
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
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