Internal Revenue Service

Index No.: 1362.00-00

Department of the Treasury

Washington, DC 20224

199902006

Contact Person:

Telephone Number:

In Reference to:
CC:DOM:P&SI:1 - PLR-114625-98
Date: OCT 9 1998

LEGEND

X =

Date 1 =

Date 2 =

This responds to a letter dated February 27, 1998, together with subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on Date 1, and started operating a business on Date 2. The sole shareholder desired S corporation treatment for X, effective on Date 2, but the election to be treated as an S corporation was not timely filed. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 2.

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 an election to be treated as an S corporation under § 1362(a). 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 2. Within 60 days of receipt of this letter, please submit a properly completed Form 2553, with a copy of this letter attached, 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.

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. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely yours,

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