

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.3-PLR-129668-00

Date:

August 16, 2001

Legend

X =
Year =
D1 =
State =
Shareholders =

Dear

This letter responds to your representative's letter dated September 11, 2000, and subsequent correspondence, written on behalf of X, requesting a ruling that X's S corporation status will be effective as of D1.

FACTS

The information submitted states that X was incorporated in State in Year. X's Shareholders intended that X be a subchapter S corporation for its tax year beginning D1; however, the S corporation election under § 1362 of the Internal Revenue Code was not filed timely. For all taxable years since D1, X filed Forms 1120S, U.S. Income Tax Return for an S corporation, and Shareholders reported the income and loss on their Forms 1040, U.S. Individual Income Tax Return, consistent with X being an S corporation.

X requests a ruling that it will be recognized as a subchapter S corporation effective D1 pursuant to § 1362(b)(5).

LAW AND ANALYSIS

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

Section 1362(b) provides when a subchapter S election will be effective. Generally, if a subchapter 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 a subchapter S corporation beginning the year in which the election is made. If a subchapter S election is made after the first two and one-half months of a corporation's taxable year, then that

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corporation will not be treated as a subchapter S corporation until the taxable year after the year in which the subchapter S election is made.

Section 1362(b)(5) provides that if: (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election or 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 the election as timely made for such taxable year.

CONCLUSIONS

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5). Therefore, X's § 1362(a) election will be treated as timely made for its taxable year that begins on D1. However, this ruling is contingent on X filing Form 2553, Election by a Small Business Corporation, with an effective date of D1, with the appropriate Service Center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

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 qualifies as a subchapter S corporation.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by an appropriate penalty of perjury statement. 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.

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 a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,
Donna Marie Young
Acting Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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