

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:

March 2, 2004

X =

A =

B =

C =

D =

d1 =

d2 =

State =

Dear _____ :

This letter responds to a letter dated September 15, 2003, and subsequent correspondence, on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

The information submitted provides that X was incorporated under State law on d1. X's shareholders, A, B, C and D, intended for X to be an S corporation as of d1.

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However, X's Form 2553, Election be a Small Business Corporation, was not filed timely.

X requests a ruling that its S corporation election be treated as timely made for the taxable year beginning d1.

A represents that X, A, and B have filed their federal income tax returns consistent with X being treated as an S corporation for X's taxable years beginning on d1 and d2. C and D also filed their federal income tax returns consistent with X being treated as an S corporation for X's taxable year beginning d2, and they agree to amend their federal income tax returns to report all tax items consistent with X being treated as an S corporation for X's taxable year beginning d1.

LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that such election shall be effective for the current taxable year if it is made during the preceding taxable year or before the 15th day of the third month of the current taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the current taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to 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).

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make an S election in a timely manner. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 within 60 days of the date of this letter, containing as an effective date d1, then such election shall be treated as timely made for X's taxable year beginning d1. A copy of this letter should be attached to the Form 2553 filed with the service center. Furthermore, this ruling is contingent on C and D filing, within 60 days of the date of this letter, amended federal income tax returns consistent with the treatment of X as an S corporation for the taxable year beginning d1. A copy of this letter should be attached to each of the amended returns.

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Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal income tax purposes.

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

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: