

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-108396-05

Date:

August 1, 2005

Legend

X:

A:

Date 1:

Dear _____ :

This responds to a letter dated December 2, 2004, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated on Date 1. A, the sole shareholder of X, intended for X to be an S corporation. However, a Form 2553, Election by a Small Business Corporation, was not timely filed. Accordingly, 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 section 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 section 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 section 1362(b)(3) shall not apply.

X did not file an election to be treated as an S corporation under section 1362(a). X has, however, established reasonable cause for not making a timely S election and is entitled to relief under section 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 60 days from the date of this letter, X must submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

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.

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,

Beverly Katz
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

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