

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:
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PLR-133855-09
Date:
October 29, 2009

Legend:

X =

Date 1 =

State =

Dear :

This responds to a letter dated April 18, 2009 submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated on Date 1 under the laws of State. X represents that the shareholders of X intended that X elect to be an S corporation effective on Date 1, but the election to be an S 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

§ 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 made.

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 timely 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 and representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for Date 1.

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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,
David R. Haglund

David R. Haglund
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: