Internal Revenue Service

Index Number: 1362.00-00

Department of the Treasury

Washington, DC 20224

199902012

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-PLR-117580-98

Date:
OCT 15 1998

Legend

X =

State =

D1 =

D2 =

This responds to your representative's letter dated July 1, 1998, written on behalf of X, requesting a ruling that X's S corporation status will be effective as of D1.

FACTS

X incorporated under State law on D1. X's shareholder 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.

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

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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. If an 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 an S corporation for the year in which the election is made. 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 effective as of the first day of that tax year.

X's S corporation election was not filed timely for the election to be effective as of its tax year beginning on D1. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSIONS

The statute of limitations on X's tax year beginning D1 has expired. Thus, based solely on the facts submitted and representations made, and assuming that X otherwise qualifies as a subchapter S corporation as of D2, and X's shareholder makes any adjustments to the shareholder's personal federal income tax returns necessary to comply with this ruling, we conclude that X will be recognized as an S corporation effective for the tax year beginning on D2. Providing X with relief for its tax year beginning D2 means that the tax imposed on certain built-in gains by § 1374 will apply to X. Please file a completed Form 2553 (with a copy of this ruling attached) reflecting X's election of subchapter S corporation status as of D2, with the applicable service center within 60 days from the date of this letter.

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 satisfies the S corporation eligibility requirements.

Temporary or final regulations pertaining to one or more of the issues 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.

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

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.

Sincerely,

DANIEL J. COBURN
Assistant to the Branch Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs & Special Industries)

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

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