Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

199913039

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3 PLR-118934-98

Date:
December 23, 1998

LEGEND:

X =

A =

Date =

Dear

This letter responds to a letter dated September 28, 1998, written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that X's S corporation status will be effective as of the taxable year beginning Date.

FACTS

According to the information submitted, X was incorporated on Date, and it was decided that X would be an S corporation. A, X's sole shareholder, hired an accountant to file X's Form 2553, Election by a Small Business Corporation. The accountant, however, failed to timely file X's Form 2553.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning Date under § 1362(b)(5).

LAW AND ANALYSIS

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

Section 1362(b) provides 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) 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 the election, then the Secretary may treat the election as timely made for such taxable year.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that X has established reasonable cause for not making a timely election and 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, containing an effective date of Date for the election, within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

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 is an S corporation for federal tax purposes.

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

Pursuant to a power of attorney on file in this office, we are sending the original ruling letter to you and a copy of this letter to X.

Sincerely yours,

Donna M. Young

Donna M. Young
Senior Technician Reviewer,
Branch 3
Office of the Assistant Chief
Counsel
(Passthroughs and Special
Industries)

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