Internal Revenue Service

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

199917073

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-121240-98
Date:
JAN 27 1999

Legend:

X =

D1 =

D2 =

This responds to your letter dated November 9, 1998, submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on D1. X intended to be treated as an S corporation for federal income tax purposes effective on D2, but the S election was not timely filed.

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 the corporation will be treated as an S corporation for the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable

412

year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the 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 taxable year.

X did not file a timely election to be treated as an S corporation under § 1362(a) effective on D2. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSION

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective D2. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer 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 and Special Industries)

Enclosures (3)
Copy of this letter
Copy for § 6110 purposes
Original Form 2553

413