Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

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199919036

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Date:
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Legend

X =

State =

D1 =

This responds to the letter dated November 20, 1998, and additional information, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on D1. X's shareholders intended that X be a subchapter S corporation, effective D1; however, an S corporation election under § 1362 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 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 for making such election for such taxable year or no such 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.

X's S corporation election was not filed timely for the election to be effective as of D1. Nevertheless, X has 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 assuming that X otherwise qualifies as a subchapter S corporation as of D1, we conclude that X will be recognized as an S corporation effective as of D1. X should file a completed Form 2553 (with a copy of this ruling attached) reflecting its election of subchapter S corporation status as of D1 with the applicable Service Center within 60 days of 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.

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

Sincerely,

David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
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