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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-PLR-105856-99
Date: APR 9 1999

Legend

X =

D1 =

D2 =

State =

This responds to your representative's letter dated February 26, 1999, written on behalf of X, requesting a ruling that X's S corporation status will be effective as of D2.

FACTS

X incorporated under State law on D1. X did not start doing business and had neither shareholders nor assets until D2. X's shareholders intended that X be a subchapter S corporation for its tax year beginning D2; 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 D2 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 a subchapter S corporation.

Section 1362(b) provides the rule on when a subchapter S election will be effective. If a subchapter 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 a subchapter S corporation for the year in which the election is made. If a subchapter 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 a subchapter S corporation until the taxable year after the year in which the subchapter 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 taxable year.

X's subchapter S corporation election was not filed timely for the election to be effective as of its taxable year beginning on D2. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSIONS

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 shareholders make any adjustments to their federal income tax returns necessary to comply with this ruling, we conclude that X will be recognized as a subchapter S corporation effective for the period beginning on D2. 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 subchapter S corporation eligibility requirements.

Pursuant to a power of attorney on file with our office, a copy of this ruling letter is being sent to X's authorized representative.

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,

Daniel J. Coburn (50-01384)
Assistant to the Branch Chief, Branch 1
Office of the Chief Counsel
(Passthroughs and Special Industries)

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