

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:1
PLR-116982-10
Date: September 7, 2010

Legend

X =

D =

State =

Dear :

This responds to the letter dated April 13, 2010, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State on D. X intended to be treated as an S corporation for Federal tax purposes effective D, but the proper 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.

Section 1362(b)(2) provides that 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. Under § 1362(b)(3), if the 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 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 election as timely made for such taxable year and effective as of the first day of that year.

X did not timely file an election to be treated as an S corporation under § 1362(a) effective D. 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 the representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be treated as an S corporation effective D if, within 60 days from the date of this letter, X submits a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David R. Haglund

David R. Haglund
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes