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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:03
PLR-103669-07
Date:
October 29, 2007

Legend

$$X =$$

D1 =

State =

Dear _____ :

This letter responds to a letter dated February 17, 2006, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated under the laws of State on D1. The Shareholders of X desired that X elect S corporation treatment effective D1. However, Form 2553, Election by a Small Business Corporation, was not filed timely. X represents that X has acted consistently with X's intended status as an S corporation.

X requests a ruling that it will be treated as an S corporation effective for the taxable year beginning D1.

Law and Analysis

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under §1362(a) shall be effective for the current taxable year if it is made during the preceding taxable year or before the 15th day of the third month of the current taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the current taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and 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 § 1362(b)(3) shall not apply).

Conclusion

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election effective D1. Thus, we conclude that X 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 within 60 days following the date of this letter, containing an effective date of D1, the election shall be treated as timely made for X's taxable year beginning D1. A copy of this letter should be attached to the Form 2553. A copy is enclosed for that purpose.

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, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

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.

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

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.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: