

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

June 15, 1999

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear

This letter responds to a letter dated January 19, 1999, requesting a ruling under section 1362(b)(5) of the Code that will be treated as an S corporation for Year 1 and Year 2.

Facts

X was incorporated on Date 1. At the time of incorporation, it was intended that X would be treated as an S corporation. It was believed that X timely filed a Form 2553, Election by a Small Business Corporation. X filed its federal income tax returns for Year 1 and Year 2 on Form 1120S, Income Tax Return by a Small Business Corporation. The shareholders of X, A and B, included their respective shares of income, credits, and deductions from X on their respective Forms 1040 for Year 1 and Year 2. On Date 2, X was notified by the Service that its Form 1120S could not be processed because there was no record of a Form 2553, Election by a Small Business Corporation, having been filed by X.

X requests a ruling that it will be recognized as an S corporation for Year 1 and Year 2.

Analysis

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

Section 1362(b) governs the effective date of an S election. 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) no section 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.

Conclusion

Based solely on the facts and representations submitted, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). Accordingly, provided X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of Date 3 for the election,

within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion 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 is, in fact, an S corporation for federal tax purposes.

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

Sincerely,

William P. O'Shea
Chief, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for Section 6110 purposes

cc: