

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3-PLR-119765-98
Date:
February 19, 1999

Legend

Corporation =

D1 =

D2 =

Dear

This letter responds to a letter dated October 14, 1998, submitted by your authorized representative on behalf of Corporation, requesting a ruling under section 1362(b)(5) of the Code that Corporation's S corporation election be effective as of D2.

Facts

Corporation was incorporated on D1. The shareholders of Corporation wanted Corporation to elect to be an S corporation under section 1362 effective D2. However, the Form 2553, Election by a Small Business Corporation, was not timely filed.

Corporation requests a ruling that it will be recognized as an S corporation as of D2 under section 1362(b)(5) of the Code.

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

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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 section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election or 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 Corporation has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). Accordingly, provided Corporation makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, which contains an effective date of D2 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.

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 Corporation is, in fact, an S corporation for federal tax purposes.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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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,

Donna M. Young
Senior Technician Reviewer, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes