

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B1-PLR-119194-00

Date:

Feb 21, 2001

Legend:

LLC =

State =

D1 =

This responds to a letter dated September 5, 2000, together with subsequent correspondence, submitted on behalf of LLC, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

LLC was formed under State law. LLC filed a Form 8832, Entity Classification Election, electing to be treated as an association taxable as a corporation for federal tax purposes, effective D1. LLC intended to be treated as an S corporation for federal income tax purposes effective on D1, but the S 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. 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. If the election is made after the first two and one-half months of a corporation's taxable year, then the 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 an election as timely made for such taxable year and effective as of the first day of that tax year.

LLC did not file a timely election to be treated as an S corporation under § 1362(a) effective on D1. LLC has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5). 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.

CONCLUSION

Based solely on the facts submitted and representations made, and provided that LLC otherwise qualifies as a subchapter S corporation, we conclude that LLC will be recognized as an S corporation effective D1. Within 60 days from the date of this letter, LLC should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

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.

This ruling is directed only to the taxpayer(s) 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 the taxpayer.

Sincerely,
Dianna K. Miosi
Chief, Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
copy of this letter
copy for § 6110 purposes