

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

March 22, 1999

Re: Request for Ruling under § 1362(b)(5) of the Internal Revenue Code

LEGEND:

A:
SSN:

B:
SSN:

X:
TIN:

Y:
Business e:

D1:

D2:

Dear

We received a letter dated , written on behalf of X, requesting rulings under §§ 1362(b)(5) and 1374 of the Internal Revenue Code. We are unable to respond to your requested ruling under § 1374. We are able to respond to your requested ruling under § 1362(b)(5). This letter is in reply to that request.

FACTS

X incorporated on D1. From D1 to D2, Y owned all of the stock of X. From D1 to D2, X had no business activity and no gross income. On the close of business on D2, Y transferred all of the assets, liabilities, and business operations of its Business e to X, and simultaneously distributed its stock in X to Y's shareholders, A and B.

A and B intended that X be a subchapter S corporation effective for X's taxable year beginning D2; however, the S corporation election under § 1362(b)(1) of the Internal Revenue Code was not filed timely for X's taxable year beginning D2. X requests a ruling that it will be recognized as a subchapter S corporation effective D2 pursuant to § 1362(b)(5).

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 regarding 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 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 § 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 and effective as of the first day of its tax year.

X's S corporation election was not filed timely for the election to be effective as of its tax year beginning on D2. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

CONCLUSIONS

Based solely on the facts submitted and representations made and assuming that X otherwise qualifies as a subchapter S corporation as of D2 and X's shareholders makes any adjustments to his personal federal income tax returns necessary to comply with this ruling, we conclude that X will be recognized as an S corporation effective D2. X should file a completed Form 2553 reflecting its election of subchapter S corporation status as of D2 with the applicable Service Center within 60 days after issuance of this

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letter. X should attach a copy of this ruling with the Form 2553 filed with the applicable Service Center.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether X otherwise satisfies the S corporation eligibility requirements.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 99-1, 1999-1 I.R.B. 6, 47. However, when the criteria in section 12.05 of Rev. Proc. 99-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

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

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 yours,

Joseph H. Makurath

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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