199938038

Internal Revenue Service

Index Number: 1362.01-03

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:Br.1-PLR-106585-99
Date: JUN 25 1999

Legend:

X =

Y =

D1 =

State =

This responds to the letter dated June 16, 1999, and prior correspondence, submitted by your representative on behalf of X, requesting relief under §1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on D1 under the laws of State as part of a plan to separate Y so that each of the shareholders of Y could operate their own business. The sole shareholder of X desired that X make an election to be treated as an S corporation effective on D1, but the election to be treated as an S corporation was not timely filed.

LAW AND ANALYSIS

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

178

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 taxable year.

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

CONCLUSION

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

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue Code.

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,

Daniel J. Coburn
Assistant to the Branch Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs & Special Industries)

179