



Tax Reduction Letter

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PLR 9820014

Date: February 9, 1998

Refer Reply to: CC:DOM:P&SI:3/PLR-116057-97

LEGEND:

Corporation = ***

Shareholder A = ***

Shareholder B = ***

Date 1 = ***

Date 2 = ***

Date 3 = ***

Date 4 = ***

Date 5 = ***

Dear ***

This letter responds to your submission of August 13, 1997, in which you requested a ruling under section 1362(b)(5) of the Code that Corporation's S corporation election be effective as of Date 2.

FACTS

Corporation was incorporated on Date 1. Corporation intended to file a Form 2553, Election by a Small Business Corporation. The Form 2553 was never filed, but Corporation filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for its first taxable year ending Date 3. The Service notified Corporation that it could not process the 1120S due to the fact that Corporation had never filed a Form 2553. Corporation subsequently filed a Form 2553 on Date 4, and received notification of the Service that its S election was accepted and would be effective as of Date 5.

Corporation requests a ruling that it will be recognized as an S corporation effective as of Date 2 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 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 submitted and representations made, we conclude that there was reasonable cause for Corporation's failure to make a timely S corporation election. Accordingly, provided Corporation makes an election to be an S corporation by filing a completed Form 2553, which contains an effective date of Date 2 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.

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

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

Sincerely yours,

William P. O'Shea

Chief, Branch 3

Office of the Assistant

Chief Counsel

(Passthroughs and Special

Industries)

Enclosures (2)

Copy of this letter

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