

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-102037-19

Date:

August 5, 2019

### LEGEND

X =

State =

Date =

Dear :

This letter responds to your request dated December 18, 2018, and subsequent correspondence submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

### FACTS

X was incorporated under the laws of State on Date. It is represented that X intended to be an S corporation effective Date. Since Date, X has filed tax returns consistent with S corporation treatment.

However, X's Form 2553, Election by a Small Business Corporation, was not timely filed. X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its tax year that began on Date.

### LAW AND ANALYSIS

Section 1361(a) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1362(b) provides when an S corporation election will be effective. Generally, if an S corporation 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 beginning the year in which the election is made.

Section 1362(b)(3) provides that if an S corporation 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 § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election or 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 the election, then the Secretary may treat the election as timely made for such taxable year.

### CONCLUSIONS

Based upon the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, X's S corporation election will be treated as timely made for its taxable year that began on Date.

This ruling is contingent on X filing Form 2553, Election by a Small Business Corporation, with an effective date of Date, with the appropriate Service Center within 120 days from the date of this ruling. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

This rule is directed only to the taxpayer who requested it. According to § 6110(k)(3) of the Code, this ruling may not be used or cited as precedent.

This ruling contained in this letter is 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 the support of the ruling request, it is subject to verification on examination.

Under a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
Stacy L. Short  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy of this letter  
Copy of this letter for § 6110 purposes