

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:B3
PLR-104288-21

Date:
August 18, 2021

LEGEND

X =

A =

B =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated December 22, 2020, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. A and B, X's shareholder's, intended for X to be an S corporation effective Date 2, but X inadvertently failed to timely file a Form 2553, Election by a Small Business Corporation.

LAW AND ANALYSIS

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with § 1362, to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the current taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 2. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a completed Form 2553 effective Date 2 with the appropriate service center within 120 days from the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to X's Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

The 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 support of the ruling request, it is subject to verification on examination.

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.

In accordance with a power of attorney on file with the office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

A copy for § 6110 purposes

cc: