

Internal Revenue Service

Department of the Treasury

Number: **200339020**
Release Date: 09/26/2003
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-116310-03
Date:
June 19, 2001

Legend

X =

A =

State =

Date 1 =

Year 1 =

Year 2 =

:

This letter responds to a letter dated February 25, 2003, and subsequent correspondence written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

According to the information submitted, X was incorporated in State on Date 1. X has one shareholder, A. It was intended that X be an S corporation effective Date 1. X, however, filed a Form 1120-A, U.S. Corporation Short-Form Income Tax Return, for its Year 1 taxable year. During Year 2, X changed accountants and learned that a Form 2253, Election by a Small Business Corporation, was not timely filed for X effective Date 1.

PLR-116310-03

X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that began on Date 1. X and A agree to amend their tax returns consistent with the treatment of X as an S corporation for taxable Year 1.

Law

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

Section 1362(b) provides when an S election will be effective. Generally, if an election to be treated as an S corporation 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. Section 1362(b)(3) provides that if an S 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 following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such election as timely made for such 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 for its taxable year that began on Date 1 and that X is eligible for relief under § 1362(b)(5). Accordingly, we conclude that X's § 1362(a) election will be treated as timely made for its taxable year that began on Date 1. However, this ruling is contingent on X filing Form 2553, with an effective date of Date 1, with the appropriate Service Center within 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553. Furthermore, this ruling is contingent on X and A, filing within 60 days following the date of this letter, amended federal income tax returns consistent with the treatment of X as an S corporation for taxable Year 1. A copy of this letter should be attached to each amended return.

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 is an S corporation for federal tax purposes.

PLR-116310-03

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

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Mary Beth Collins
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: