

X and A agree to prepare and amend their federal tax returns consistent with the treatment of X as an S corporation for X's tax years Year 1, Year 2, and Year 3.

Law and Analysis

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

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

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making such election for such tax year, or no such election is made for any tax year, and (B) the Secretary determines that there was reasonable cause for the failure to make such election, then the Secretary may treat such an election as timely made for such tax 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 an S election in a timely manner. 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 with the appropriate service center a completed Form 2553 within 60 days of the date of this letter, containing as an effective date d2, the election shall be treated as timely made for X's tax year beginning d2. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose. Furthermore, this ruling is contingent upon X and A filing, within 60 days following the date of this letter, amended and original federal income tax returns, as applicable, consistent with the treatment of X as an S corporation for tax years Year 1, Year 2, and Year 3. A copy of this letter should be attached to each of the tax returns.

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 income tax purposes. However, an officer of a corporation who performs more than minor services (and who

either receives or is entitled to receive remuneration, directly or indirectly) is an employee of the corporation, and payments by an S corporation to a corporate officer must be treated as wages for federal employment tax purposes to the extent that the amounts are reasonable compensation for services to the corporation.

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

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes