

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date: October 26, 2007

Legend

X =

A =

B =

d1 =

State =

Dear :

We received a letter dated April 27, 2007, written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to that request.

Facts

X was incorporated under State law on d1. X's shareholders, A and B, intended for X to be an S corporation effective d1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning d1.

Law

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election made 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 taxable year and on or before the 15th day of the 3rd month of the taxable year.

Section 1362(b)(2) provides that, if (A) an election made under § 1362(a) is made for any taxable year during such year and on or before the 15th day of the 3rd month of such year, but (B) either (i) on 1 or more days in such taxable year before the day on which the election was made the corporation did not meet the requirements of § 1362(b), or (ii) 1 or more of the persons who held stock in the corporation during such taxable year and before the election was made did not consent to the election, then such election shall be treated as made for the following 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) such election is made after the 15th day of the 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then the election shall be 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 make the election, then the Secretary may treat the 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 an S corporation election. 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 effective d1, within 60 days following the date of this letter, the election shall be treated as timely made.

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.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

Sincerely,

/s/

Christine Ellison
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes