

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-108638-07

Date:
December 21, 2007

Legend

X =

A =

B =

State =

d1 =

d2 =

Dear :

We received the letter dated December 1, 2006, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to your request.

Facts

X was incorporated under the laws of State on d1. On d1, X had two shareholders: A and B. A became X's sole shareholder on d2. X represents that it was

the intent of A and B for X to be an S corporation as of d1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X represents that since d1, X, its current shareholder A, and its former shareholder B, have reported their income consistent with X's intended status as an S corporation. X requests a ruling that it will be recognized as an S corporation effective d1.

Law and Analysis

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 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 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 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 timely make the election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Conclusion

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely 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, we rule that the election shall be treated as timely made. A copy of this letter should be attached to Form 2553.

Except as expressly provided herein, we express or imply no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

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

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

Sincerely,

/s/

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

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: