

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200847009**
Release Date: 11/21/2008

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1362.01-03, 1362.04-00

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-122026-08
Date:
August 19, 2008

Company =

LLC =

Shareholders =

State =

a =

b =

c =

d =

Dear _____ :

We received a letter dated May 7, 2008, and subsequent correspondence, submitted on behalf of Company by its authorized representatives requesting rulings under §§ 1362(b)(5) and 1362(f) of the Internal Revenue Code. This letter responds to that request.

Facts

Company was incorporated on a under State law. It was intended for Company to be an S corporation effective b. However, Company's Form 2553, Election by a Small Business Corporation, was not timely filed. In addition, Company discovered that its shareholder, LLC, was an ineligible S corporation shareholder. Immediately thereafter, in c, LLC distributed the stock of Company to its individual members, Shareholders.

Company represents that the presence of an ineligible shareholder was inadvertent. Company and Shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary.

Company requests a ruling under § 1362(b)(5) that it will be treated as an S corporation effective b, and a ruling under § 1362(f) that the effect of the invalid § 1362(a) election will be waived.

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

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)(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 such election for such taxable year or no such 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 such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation, and (4) the corporation for which the election was made, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective b, within 60 days following the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

Company failed to timely file an election to be treated as an S corporation effective b. Had Company timely filed the election, it would have been ineffective because Company had an ineligible shareholder on b. Based solely on the facts submitted and representations made, we conclude that Company's election to be treated as an S corporation effective b, would have been ineffective and also conclude that the ineffectiveness would have been inadvertent within the meaning of § 1362(f).

Under the provisions of § 1362(f), Company will be treated as an S corporation effective b, and thereafter, provided that Company's S corporation election is not otherwise terminated under § 1362(d). From b through d, Shareholders will be treated as if they held the shares in Company directly. Company and Shareholders must file amended federal income tax returns consistent with Company being an S corporation. Accordingly, Shareholders, in determining their respective income tax liabilities, must include their pro rata shares of separately and nonseparately computed items of Company under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by Company under § 1368. If Company or Shareholders fail to treat Company as described above, this letter ruling will be null and void.

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 Company 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 representatives.

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.

Sincerely,

/s/

Tara P. Volungis
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes