

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-132215-09

Date:
October 13, 2009

LEGEND

Company =

State =

Date =

Dear :

We received a letter dated June 2, 2009 submitted on behalf of Company by Company's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to your request.

FACTS

Company was incorporated on Date under the laws of State. Shareholder intended to elect S corporation status for Company, but Form 2553, Election by a Small Business Corporation, was not filed timely. Company requests a ruling that it will be treated as an S corporation effective Date.

LAW

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 3rd 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 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then such 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 such election for such 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 the 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 Date, within sixty (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 the Form 2553.

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

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.

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

The ruling contained in this letter is 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 a ruling, it is subject to verification on examination.

Sincerely,

/s/

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

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes