

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:B02
PLR-135481-09
Date:
October 28, 2009

X =

A =

State =

Date =

Year =

Dear :

This responds to a letter dated July 24, 2009, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date under the laws of State. A is the 100% shareholder of X. A represents that A intended for X to be treated as an S corporation effective Date. However, no Form 2553, Election by a Small Business Corporation, was timely filed for X. X requests to be treated as an S corporation effective Date.

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

Section 1362(b) provides the rule on when an S corporation will be effective. Section 1362(b)(2) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be

treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year 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 (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date within 60 days following the date of this letter, then such election will be treated as timely made for Date. A copy of this letter should be attached to the Form 2553. As a condition for this relief, X and A must file, within 60 days from the date of this letter, amended income tax returns for Year through present consistent with X having made a timely election to be treated as an S corporation effective Date.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above under any other provision of the Code, including whether X is, in fact, an S corporation for federal tax purposes.

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.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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