

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:01
PLR-134326-12
Date:
November 20, 2012

Legend

X =

A =

Date 1 =

State =

Dear :

This letter responds to your letter, submitted on behalf of X, dated June 15, 2012, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated under State law on Date 1. A, X's sole shareholder, represents that X intended to be treated as an S corporation effective Date 1. No valid election to treat X as an S corporation, effective Date 1, was timely filed with the Service Center.

Law and Analysis

Section 1362(a) of the Code provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) provides that if – (A) an election under § 1362(a) is made for any taxable year after the date prescribed in § 1362(b) for making such an 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 such election, the Secretary may treat such an election as timely made for such taxable year.

X did not file a timely election to be treated as a S corporation under section 1362(a). X has, however, established reasonable cause for not making a timely S election. Therefore, X is entitled to relief under section 1362(b)(5).

Conclusion

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for its first taxable year, Year 1. Accordingly, provided that X files a completed original Form 2553, along with a copy of this letter, to the relevant Service Center within 120 days from the date of this letter, then such election will be treated as timely made for Date 2.

Except as expressly provided herein, no opinion is expressed or implied 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(s) 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 taxpayer representative.

Sincerely,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes

cc: