

Internal Revenue Service

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Person To Contact:

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Telephone Number:

Refer Reply To:

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Date:

July 17, 2017

LEGEND

X =

Y =

State =

A =

B =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

Dear :

This letter responds to a letter, dated January 10, 2017, and subsequent correspondence, written on behalf of X from X's authorized representative, requesting a ruling under §1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X is the state-law successor to Y, which was formed under the laws of State on D4. On D1, A, the person who would have been the then-sole shareholder of Y if Y had been properly formed, attempted to form Y. In D2, A filed a Form 2553, Election by a Small Business Corporation, for Y effective D3. But A did not properly form Y on D1. Thus, the S corporation election was invalid. On D4, A properly formed Y. On D5, Y was advised by its accountant that Y's S corporation election was ineffective. On D6, A transferred a portion of A's 100% interest in X to a trust, B, that X represents was and is an eligible shareholder of an S corporation. On D7, Y converted under State state law to a limited liability company, X, in a transaction that, X represents, qualified as a reorganization under § 368(a)(1)(F).

X represents that Y and A filed their tax returns as if Y were an S corporation. This includes allocating Y's items of income, loss, deduction, and credit to A.

X requests a ruling that it will be recognized as an S corporation effective D4.

LAW AND ANALYSIS

Section 1361(a) 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)(B) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

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 at any time during the preceding taxable

year, or 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) such 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 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 the election for the 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 the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

X did not file a timely election to be treated as an S corporation under § 1362(a) effective D4. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 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 will be recognized as an S corporation effective D4. Within 60 days from the date of this letter, X must submit a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item described above under any other provision of the Code. Specifically, we express or imply no opinion regarding whether Y or its successor is otherwise eligible to be 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.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

David R. Haglund

David R. Haglund
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for §6110 purposes

cc: