

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-127437-17

Date:

March 05, 2018

LEGEND

X =

State =

D1 =

D2 =

D3 =

D4 =

A =

Trust 1 =

Trust 2 =

PLR-127437-17

Dear _____ :

This letter responds to a letter dated September 1, 2017, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X was organized on D1 as a corporation under the laws of State. Originally, A owned all of the shares of X. A intended for X to be an S corporation effective D1, but X inadvertently failed to timely file a Form 2553, Election by a Small Business Corporation.

On D2, A transferred shares of stock in X to Trust 1 and to Trust 2. X represents that Trust 1 and Trust 2 each met the qualified subchapter S trust (QSST) requirements set forth in § 1361(d)(3) as of D2 and thereafter. On D3, the income beneficiaries of Trust 1 and Trust 2 each timely filed an election for their respective trust to be treated as a QSST effective D2. Subsequently, in D4, X received a notice from the Internal Revenue Service indicating that X had not made an election to be an S corporation. X then submitted a letter requesting relief under § 1362(b)(5).

X represents that X and A intended for X to be an S corporation effective D1 and that X has filed all returns consistent with X's status as an S corporation since D1.

LAW AND ANALYSIS

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

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D1. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D1, within 120 days from the date of this letter, then such election will be treated as timely made. A copy of this letter and the previously filed QSST elections for Trust 1 and Trust 2 should be attached to X's Form 2553.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and is 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 this request, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes