

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-112886-20

Date:
July 30, 2020

LEGEND

X =

A =

B =

C =

State =

Date =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated May 27, 2020, on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a limited liability company, formed under State law on Date. X's members, A, B, and C, also decided to make an election to treat X as an S corporation effective Date. The members relied on X's tax adviser to file X's Form 2553, Election by a Small Business Corporation, beginning Date. However, the Form was never filed. X filed Form 1120S, U.S. Income Tax Return for an S corporation consistent with its intended S corporation election for taxable beginning with Date through Year 2. When X's members learned that the Internal Revenue Service did not have any tax returns on file for X, X and X's members engaged new tax advisors to file a Form 2553, Election by a Small Business Corporation effective Date. The new tax advisors filed the election under Rev. Proc. 2013-30 requesting X's S election take effect retroactively, from Date through Year 2. X received relief from Year 1 to Year 2.

X requests a ruling under § 1362(b)(5), that its S corporation election will be treated as timely made beginning on Date.

LAW AND ANALYSIS

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 election will be effective. Generally, 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 for making the election 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.

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S election for its taxable year that began on Date and that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of Date for the election, within 120 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center. Furthermore, this ruling is contingent on X and its shareholders, A, B, and C, continuing to file federal income tax returns consistent with the treatment of X as an S corporation.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is an S corporation for federal tax purposes.

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

This ruling is directed only to the taxpayer who requested 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, copies of this letter ruling will be sent to your authorized representatives.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of letter

Copy of letter for §6110 purposes

cc: