

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-101372-22

Date:
July 08, 2022

Legend

Company =

State =

X =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

n =

Dear :

This letter responds to a letter dated January 3, 2022, and subsequent correspondence, submitted on behalf of Company by its authorized representatives, requesting rulings under sections 1362(g) and 1362(b)(5) of the Internal Revenue Code (Code).

Facts

According to the information submitted, Company was incorporated in State and elected to be treated as an S corporation effective Date 1. On Date 2, Company's sole shareholder, A, transferred n% of A's Company shares to X, an ineligible shareholder, resulting in the termination of Company's S corporation election. On Date 3, B acquired the remaining Company shares still held by A, and on Date 4, B acquired the Company shares then held by X. Following these acquisitions, B was the sole shareholder of Company.

Company represents that B is a U.S. resident individual and, therefore, an eligible shareholder of an S corporation. Company further represents that B is unrelated to A and X. Company is requesting permission to reelect to be an S corporation effective Date 5, prior to the termination of the five-year waiting period imposed by section 1362(g). Company is also requesting that the election be treated as timely made under section 1362(b)(5).

Law

Section 1362(a) provides that except as provided in 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(g) provides that if a small business corporation has made an election under 1362(a) and if such election has been terminated under 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides, in part, that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Section 1362(b)(5) of the Code provides that if — (A) an election under 1362(a) is made for any taxable year after the date prescribed by 1362(b) for making such 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.

Conclusion

Based solely on the facts and the representations submitted, we conclude that the events causing the termination of Company's S corporation election were not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and were not part of a plan on the part of the corporation or of such shareholders to terminate the election. Therefore, consent is granted for Company to make an election to be an S corporation effective Date 5.

In addition, Company has established reasonable cause for failing to make a timely election to be an S corporation effective Date 5. Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center campus, effective Date 5, within 120 days following the date of this letter, then such election will be treated as timely made for Company's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. No opinion is expressed or implied regarding Company's eligibility to elect to be an S corporation.

A copy of this letter should be attached to Company's federal income tax return for its taxable year for which the S corporation election is accepted as timely filed. A copy of this letter is being sent to Company for that purpose.

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.

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

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

Sincerely,

Laura C. Fields
Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosure (1)
Copy of this letter for §6110 purposes

cc: