

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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CC:PSI:B01
PLR-109639-22

Date:
July 14, 2022

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Year 1 =

State =

Dear :

This letter responds to your letter dated April 26, 2022, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated under the laws of State. X's sole shareholders, A and B, intended for X to elect S corporation status for federal tax purposes effective Date 1. However, X failed to timely file the Form 2553, Election by a Small Business Corporation, for X effective Date 1. Additionally, X inadvertently filed Form 1120, U.S. Corporation Income Tax Return, for X's Year 1 taxable year rather than Form 1120S, U.S. Income Tax Return for an S Corporation. Nevertheless, A and B have filed tax returns consistent with X being an S corporation effective Date 1 and thereafter. Upon discovery of the error, X sought relief under Rev. Proc. 2013-30, 2013-36 I.R.B. 173 to make a late S corporation election effective Date 1. However, the Service granted relief effective Date 2, the first date that X was eligible for relief under Rev. Proc. 2013-30. Therefore, X requests a private letter ruling under § 1362(b)(5) that its S corporation election will be treated as timely made effective Date 1.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect 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 the election is 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 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 submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election effective Date 1. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1 with the appropriate service center within 120

days from 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.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

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.

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

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

Sincerely,

By: _____
Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of this letter for § 6110 purposes

cc: