

Internal Revenue Service

Number: **202351002**

Release Date: 12/22/2023

Index Number: 1362.00-00

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-105635-23

Date:

September 15, 2023

Legend

X =
State =
Date =

Dear :

This letter responds to a letter dated March 3, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting relief under § 1362(b)(5) of the Internal Revenue Code (Code) to treat its S corporation election as timely made.

FACTS

The information submitted states that X was formed as a corporation under the laws of State. X represents that it intended to be treated as an S corporation effective Date. However, X did not timely file Form 2553, Election by a Small Business Corporation.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with § 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) 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 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 (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the 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, then the Secretary may treat such 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 S corporation election and is eligible for relief under § 1362(b)(5). Accordingly, X's S corporation election will be treated as timely made effective Date.

This ruling is contingent on X filing Form 2553 with an effective date of Date with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the Form 2553 filed with the service center.

Further, this ruling is contingent on X and its owner filing within 120 days from the date of this letter all required returns for all open years consistent with the requested relief. A copy of this letter should be attached to any such returns.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code.

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, we are sending a copy of this letter to your authorized representatives.

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 request for a ruling, it is subject to verification on examination.

Sincerely,

Richard T. Probst
Senior Technical Reviewer, Branch 3
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for § 6110(k)(3) purposes

cc: