

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-122866-23
Date:
May 6, 2024

LEGEND

X =

State =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to a letter dated October 23, 2023, submitted on behalf of X by its authorized representatives, 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 on Date 1. X represents that it intended to be treated as an S corporation effective Date 2. However, X inadvertently failed to timely file a Form 2553, Election by a Small Business Corporation.

LAW AND ANALYSIS

Section 1362(a)(1) 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 such 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 S corporation election and 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 2 with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made.

Further, this ruling is contingent on X and its shareholders 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 and 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 representative.

Sincerely,

By: _____
Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: