

Internal Revenue Service

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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:B02
PLR-147515-04

Date:
December 21, 2004

Legend

X:

A:

Date 1:

Dear _____ :

This responds to a letter dated August 30, 2004, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated on Date 1. A, the sole shareholder of X, on Date 1, intended for X to be an S corporation effective for the taxable year beginning Date 1. However, a Form 2553, Election by a Small Business Corporation, was not timely filed for X's taxable year beginning Date 1. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 1.

Law and Analysis

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 and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 1 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 1. A copy of this letter should be attached to the Form 2553.

As a condition for this late election relief, X and A must amend their federal income tax returns consistent with X having made a timely § 1352(b)(5) election effective Date 1.

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, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 forwarded to X's authorized representative.

Sincerely,

Beverly Katz
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (3)

Copy of signed Form 872
Copy of this letter
Copy for § 6110 purposes