

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200804017**
Release Date: 1/25/2008
Index Number: 1362.01-03

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-153350-06
Date:
October 25, 2007

LEGEND

X =
Shareholder =
State =
D1 =
D2 =

Dear :

We reviewed a letter dated October 30, 2006, and subsequent correspondence written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to your request.

Facts

X was formed under State law on D1, and began business operations on or about D2. X's Shareholder intended that X would be an S corporation beginning on D2. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely. X represents that X has acted consistently with X's intended status as an S corporation since D2.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning D2.

Law and Analysis

Section 1362(a)(1) 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 small business corporation makes an election under § 1362(a) for any taxable year, and 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 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 the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Conclusion

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 within 60 days of this letter, containing an effective date of D2, the election shall be treated as timely made for X's taxable year beginning D2. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

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 the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

/s/

Christine Ellison
Branch Chief, Branch 3
Associate Chief Counsel
(Passthroughs & Special Industries)