

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:03
PLR-113130-20
Date:
December 3, 2020

X =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to a letter dated May 6, 2020, and subsequent correspondence, submitted on behalf of X, requesting relief to file a late S corporation election under § 1362(b)(5) of the Internal Revenue Code (“Code”).

FACTS

The information submitted states that X was formed as a limited liability company on Date 1 under the laws of State. X represents that it filed a Form 8832, Entity Classification Election, to treat X as an association taxable as a corporation for federal tax purposes effective for the taxable year beginning on Date 2. X represents that it intended to elect to be treated as an S corporation for federal tax purposes beginning on Date 3. However, X represents that it failed to properly and timely file Form 2553, Election by a Small Business Corporation, effective for Date 3. X further represents that it and its shareholders have filed their federal tax returns consistent with X's treatment as an S corporation at all times since Date 3.

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 of the third month of the 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 the representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 3. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 3, along with a copy of this letter, with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made effective Date 3.

Except as expressly provided herein, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code, including whether X qualifies as a small business corporation under § 1361(b) of the Code.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 X's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Adrienne M. Mikolashek
Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes

cc: