

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-103404-24

Date:  
August 20, 2024

Legend:

X =

Date1 =

Date2 =

A =

State =

Dear :

This letter responds to a letter dated March 7, 2024, and subsequent correspondences, submitted on behalf of X by X's authorized representatives, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1. A, X's sole shareholder, intended for X to be an S corporation for federal tax purposes effective Date 2, but 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 15<sup>th</sup> 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 15<sup>th</sup> day of the month of the taxable year and on or before the 15<sup>th</sup> 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 effective Date 2. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, provided that X makes an election to be an S corporation effective Date 2 by filing a completed Form 2553 with the appropriate service center within 120 days from the date of this letter, the election will be treated as timely made. Further, this ruling is contingent on X and its shareholder, A, filing federal income tax returns consistent with the treatment of X as an S corporation. A copy of this letter should be attached to the Form 2553 filed with the service center.

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.

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.

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.

Sincerely,

Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc: