

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:B03

PLR-120352-04

Date:

July 28, 2004

LEGEND

X =

A =

B =

State =

D1 =

D2 =

Dear _____ :

This letter responds to a letter, dated March 4, 2004, and subsequent correspondence from X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on D1. The shareholders of X are A, and A's spouse, B, who owns a community property interest in X. A and B intended for X to be

an S corporation beginning D2. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1.1362-6(b)(2)(i) of the Income Tax Regulations provides that when stock of the corporation is owned by husband and wife as community property (or the income from the stock is community property), each person having a community interest in the stock or income therefrom must consent to the election.

Section 1362(b)(1) provides 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 3d month of the taxable year.

Section 1362(b)(3) provides 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 3d month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then such election shall be 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, 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 its failing to make a timely S corporation election, and 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 effective D2, within 60 days following the date of this letter, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except as expressly provided herein, we express or imply no opinion concerning the federal 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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

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.

Sincerely yours,

/s/

Christine Ellison
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)