

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:

December 23, 2003

LEGEND

X =

y =

A =

d1 =

d2 =

d3 =

State =

Year1 =

Year2 =

Year3 =

Year4 =

Year5 =

Dear :

This letter responds to a letter dated June 24, 2002, and subsequent correspondence submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under State law on d1. X's sole officer-shareholder, A, intended for X to elect to be treated as an S corporation effective d2. A incorporated X with the intention that he would conduct his business, y, through it.

However, for Years 1, 2, 3, 4, and 5, A reported items of income and loss of business y on A's individual federal income tax return and treated business y as if it was a sole proprietorship. During Years 1 through 5, A reported that A owed self-employment tax related to business y. However, A has not fully paid the self-employment tax for Years 2 and 3.

X requests a ruling under § 1362(b)(5), that its § 1362(a) election will be treated as timely made for its taxable year that began on d2.

LAW AND ANALYSIS

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

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the taxable year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (2) 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 such 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 and that X is eligible for relief under § 1362(b)(5) for its taxable year that began on d3. Accordingly, if X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of d3 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. 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, 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. In addition, we express no opinion on A's treatment of business y as a sole proprietorship for Years 1 through 5 and on whether business y was actually conducted through the entity X or as a sole proprietorship for Years 1 through 5. Moreover, an officer of a corporation who performs more than minor services (and who either receives or is entitled to receive any remuneration, directly or indirectly) is an employee of the corporation and payments by an S corporation to a corporate officer must be treated as wages for federal employment tax purposes to the extent the amounts are reasonable compensation for services to the corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Mary Beth Collins
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

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