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:02
PLR-105527-12
Date:
May 08, 2012

LEGEND

Company =

Parent =

State =
D1 =
D2 =
A =

B =

C =

D =

Dear :

This responds to a letter dated February 3, 2012, and subsequent correspondence submitted on behalf of Company by its authorized representatives requesting a ruling under §§ 1362(b)(5) and 1362(f) of the Internal Revenue Code.

The information submitted states that Company was incorporated in State on D1. Parent owned 100% of Company. A, B, C, and D are shareholders of Parent. On D2, Company learned that Parent was an ineligible S corporation shareholder. Immediately thereafter, Parent distributed all of its shares in Company to A, B, C. and D, all of whom are eligible S corporation shareholders. It was intended that Company elect S

corporation treatment effective D1; however, a Form 2553, Election by a Small Business Corporation, was not timely filed for Company.

Company represents that, with the exception of having an ineligible shareholder for the period beginning D1 and ending D2, it meets all of the requirements to be a small business corporation under § 1361(b) effective D1. Further, Company represents that the presence of an ineligible shareholder was inadvertent. Company and its shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(a)(1) provides that except as provided in § 1362(g), a small business corporation may elect, in accordance with provisions of § 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 15th day 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 (determined without regard to § 1362(b)(3)), 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 the election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation, and (4) the corporation for which the election was made, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f) agrees to

make adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding, the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based on the facts submitted and representations made, we conclude that Company established reasonable cause for failing to make a timely election to be an S corporation effective D1. Thus we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D1 within 120 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.

Company failed to timely file an election to be treated as an S corporation effective D1. Had Company filed the election, it would have been ineffective because Company had an ineligible shareholder on D1. Based solely on the facts submitted and the representations made, we conclude that Company's election to be treated as an S corporation effective D1, would have been ineffective and conclude that the ineffectiveness would have been inadvertent within the meaning of § 1362(f).

Under the provisions of § 1362(f), Company will be treated as an S corporation effective D1, and thereafter, provided that Company's S corporation election is not otherwise terminated under § 1362(d). From D1 through D2, A, B, C, and D will be treated as if they held the shares in Company directly. Company and A, B, C, and D must file federal income tax returns consistent with Company being an S corporation. Accordingly, A, B, C, and D, in determining their respective income tax liabilities, must include their pro rata share of separately and nonseparately computed items of Company under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by Company under § 1368. A copy of this letter should be attached to any original or amended income return of Company or A, B, C, or D for the taxable year beginning D1. If Company or its shareholders fail to treat Company as described above, the letter ruling will be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. In particular, we express not opinion as to whether Company otherwise qualifies as a subchapter S corporation under § 1361.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to Company's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

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

cc: