

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

October 20, 1999

Legend

Corporation =

D1 =

D2 =

This letter responds to a letter dated June 15, 1999, submitted on behalf of Corporation, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that Corporation's S corporation election will be effective as of D2.

Facts

Corporation was incorporated on D1. The shareholders of Corporation intended for Corporation to elect S corporation status, and prepared a Form 2553, Election by a Small Business Corporation, with an effective date of D2. The Form 2553, however, was never filed.

Analysis

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

Section 1362(b) explains 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 that corporation will be treated as an S corporation for the 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 that corporation will not be treated as an S corporation until the taxable year following the year in which the S election is made.

Section 1362(b)(5) provides that if no § 1362(a) election is made for any taxable

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year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Conclusion

Applying the relevant law to the facts submitted and representations made, we rule that Company's § 1362(a) election will be treated as timely made for its taxable year that begins on D2. However, this ruling is contingent on Company filing Form 2553, Election by a Small Business Corporation, with an effective date of D2, with the appropriate Service Center within 60 days from the date of this ruling. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Corporation otherwise qualifies as an S corporation.

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

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,

Jeff Erickson
Assistant to the Chief, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

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