

Internal Revenue Service

Department of the Treasury

Number: **200147031**
Release Date: 11/23/2001
Index Number: 1362.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR- 117870-01
Date:
August 13, 2001

LEGEND

X =
A =
B =
D1 =
Y1 =

Dear

This letter responds to a letter dated January 24, 2001 written on behalf of X, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that X's S corporation status will be effective as of the taxable year beginning D1.

FACTS

X was incorporated on D1. X's shareholders, A and B, intended that X would elect to be treated as an S corporation and hired an attorney to file X's Form 2553, Election by a Small Business Corporation.

X timely filed a Form 1120S for Y1, but A and B mistakenly failed to pass through their proportionate shares of losses to their individual returns. Subsequent to the filing of the Form 1120S, X was notified by the Internal Revenue Service that the Form 2553 was never received.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning D1 under § 1362 (b)(5). A and B represent that they will amend their individual tax returns for Y1 to reflect their proportionate shares of X's income and losses.

LAW AND ANALYSIS

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

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Section 1362(b) provides when an S election will be effective. 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. 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 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 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.

CONCLUSIONS

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, provided that 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 D1 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. This ruling is conditioned on X's shareholders, A and B, filing within 60 days following the date of this letter, amended federal income tax returns for any taxable year for which they had filed returns inconsistent 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. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply 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 X is an S corporation for federal tax purposes.

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

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes