

**Internal Revenue Service**

Department of the Treasury

Number: **200211011**  
Release Date: 3/15/2002  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-136703-01  
Date:  
December 5, 2001

**Legend**

X =

A =

B =

C =

State =

D1 =

D2 =

D3 =

Dear

This letter responds to your letter dated June 29, 2001, and subsequent correspondence, submitted on behalf of X, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated in State on D1 and began doing business on D2. Initially, X's shareholders were A, B, and C. On D3, B and C transferred their interest in X to A, thereby making A the sole shareholder of X. At all times, X has been treated as an S Corporation by its shareholders. However, X failed to file Form 2553, Election by a Small Business Corporation.

X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that begins on D2.

**LAW AND ANALYSIS**

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

Section 1362(b) provides 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 beginning 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 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 section 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 information submitted and the 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). Therefore, we conclude that X's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its taxable year that began on D2. This conclusion is contingent on X filing Form 2553 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 filed with the Service Center.

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, we express or imply no opinion concerning whether X is an S corporation for federal tax purposes.

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.

Under a Power of Attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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

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