

**Internal Revenue Service**

Department of the Treasury

Number: **200234042**  
Release Date: 8/23/2002  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-108796-02  
Date:  
May 17, 2002

Company:

Shareholders:

Date 1:

Date 2:

Dear \_\_\_\_\_ :

This letter responds to your letter dated January 24, 2002, as well as subsequent correspondence, requesting, on behalf of Company, a ruling under § 1362(b)(5) of the Internal Revenue Code regarding Company's late S corporation election.

**FACTS**

Company was incorporated on Date 1. Shareholders represent that they intended Company to be an S corporation from inception; however, Form 2553 (Election by a Small Business Corporation) was not filed timely with the Internal Revenue Service. Company did not file Form 1120S (U.S. Income Tax Return for an S Corporation) for its first tax year, but it did file, untimely, Form 1120S for its next two tax years. Company represents that, since its inception, all Shareholders have filed their individual income tax returns consistent with Company's intended status as an S corporation.

PLR-108796-02

## LAW AND ANALYSIS

Section 1362(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year—

- (A) at any time during the preceding tax year, or
- (B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if--

- (A) a small business corporation makes an election under § 1362(a) for any tax year, and
- (B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year,

then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if--

- (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by this subsection for making the election for that tax year or no such election is made for any tax year, and
- (B) the Secretary determines that there was reasonable cause for the failure to timely make the election,

the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

Based on the facts submitted and representations made, we conclude that there was reasonable cause for Company's failure to make a timely S corporation election. Therefore, we conclude that Company's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning Date 2 (the date Company began operations). This ruling is contingent, however, on Company (1) obtaining the consent of all Shareholders, current and former; and (2) filing Form 2553, to be effective on Date 2, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion on whether Company otherwise is eligible to be an S corporation.

PLR-108796-02

Under a power of attorney on file with this office, we are sending you the original of this letter and a copy to the taxpayer.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,  
CHRISTINE ELLISON  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

enclosure: copy of this letter  
copy for § 6110 purposes

cc: