

Internal Revenue Service

Department of the Treasury

Number: **200239015**
Release Date: 9/27/2002
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3-PLR-106375-02
Date:
June 21, 2002

LEGEND

X =

Shareholder A =

Shareholder B =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

PLR-106375-02

Dear _____ :

This letter responds to your letter, dated December 5, 2001, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on Date 1, Year 1. Shareholders A and B intended for X to be treated as an S corporation for federal tax purposes as of Date 1, Year 1, and relied on X's accountant and attorney to file the proper forms. X filed its initial corporate income tax return for Year 1 as an S corporation, however, due to a misunderstanding between X's attorney and accountant, no Form 2553, Election by a Small Business Corporation, was timely filed with the Internal Revenue Service.

Shareholders A and B wanted to request relief under § 1362(b)(5) at that time, but there was a lawsuit pending over who were the actual shareholders of X. For the years Year 2 through Year 8, X had to file as a C corporation. On Date 2, Year 9, Shareholders A and B and the parties to the lawsuit entered into an agreement stating that the other parties never received original stock of X. Shareholders A and B, as the sole shareholders of X, promptly requested relief for X under § 1362(b)(5).

LAW AND ANALYSIS

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

Section 1362(b) provides the rule on 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 the 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 the 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.

CONCLUSION

Based on the facts represented and the information submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation. Because X is filing an extension for Year 6, X is eligible for relief under § 1362(b)(5) beginning Year 6. Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553,

PLR-106375-02

containing an effective date of Date 3, Year 6, within 60 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 filed with the service center.

This ruling is contingent upon X and X's shareholders treating X as having been an S corporation for the period beginning Date 3, Year 6, and thereafter. Accordingly, Shareholder A and Shareholder B must include their percent of the separately and nonseparately stated items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. This ruling is null and void if X or X's shareholders fail to comply with these requirements.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b).

Under a power of attorney on file with this office, we are sending a copy of this letter to X's representative.

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

Sincerely,
Jeanne M. Sullivan
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: