

Internal Revenue Service

Department of the Treasury

Number: **200303044**
Release Date: 1/17/03
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-150286-02
Date:
October 15, 2002

Legend

Corporation =

Shareholders =

State =

Date 1 =

Dear :

This letter responds to a letter dated August 26, 2002, and subsequent correspondence, requesting a ruling on behalf of Corporation under § 1362(b)(5) of the Internal Revenue Code.

Facts

According to the information submitted, Corporation was incorporated in State on Date 1. Corporation is owned entirely by Shareholders. On or around Date 1, Shareholders decided that Corporation would elect to be an S corporation effective on Date 1, but Corporation failed to file a timely Form 2553, Election by a Small Business Corporation.

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Corporation requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that began on Date 1.

Applicable Law

Section 1362(a) 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 election to be treated as an S corporation 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. Section 1362(b)(3) provides that if an S election is made after the fifteenth day of the third month of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Conclusion

Based on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for failing to make a timely S election pursuant to § 1362(b)(5). Accordingly, provided Corporation makes an election to be treated as an S corporation for federal tax purposes by filing a completed Form 2553, containing an effective date of Date 1 for the election, with the appropriate Service Center 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. 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, we express or imply no opinion concerning whether Corporation is an S corporation for federal tax purposes.

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to Corporation's authorized representative.

Sincerely yours,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)