

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-144079-02

Date:

November 8, 2002

### Legend

Corporation =

Shareholder =

State =

Date 1 =

Dear :

This letter responds to a letter dated July 12, 2002, and subsequent correspondence, requesting a ruling on behalf of Corporation under § 1362(b)(5) of the Internal Revenue Code.

### Facts

Corporation was incorporated in State on Date 1. Corporation has one shareholder, Shareholder. It is represented that Corporation has intended to be taxed as an S corporation since Date 1. However, Corporation discovered that Form 2553 (Election by a Small Business Corporation) was not filed timely with the Internal Revenue Service.

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

### Applicable Law

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 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 beginning in the year in which the election is made. If the election is made

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after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as having made an effective election to be treated as an S corporation for federal tax purposes until the following taxable year.

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 election pursuant to § 1362(b)(5). Accordingly, Corporation's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning Date 1. However, this ruling is contingent on Corporation 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. 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 Internal Revenue Code. Specifically, we express or imply no opinion concerning whether Corporation 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.

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

Sincerely yours,  
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