

**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-149922-02  
Date:  
December 4, 2002

LEGEND

X =

A =

d1 =

d2 =

State =

Dear :

This letter responds to a letter dated August 28, 2002, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on d1 and began doing business on d2. X has one shareholder, A. It is represented that X intended to be an S corporation since d2. However, X discovered that its S election had not been timely filed.

X 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 d2.

LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

PLR-149922-02

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 for 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 following the year in which the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362 for making the election for the taxable year or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

## CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S election for its taxable year that began on d2, and is eligible for relief under § 1362(b)(5). Accordingly, we conclude that X's § 1362(a) election will be treated as timely made for its taxable year that began on d2. However, this ruling is contingent on X filing a completed Form 2553, Election by a Small Business Corporation, 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.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the foregoing facts. Specifically, we express or imply no opinion on whether X otherwise qualifies as an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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

Sincerely,

Mary Beth Collins  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)