

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-103203-03
Date:
April 22, 2003

X =

A =

d1 =

d2 =

d3 =

State =

Dear :

This letter responds to a letter dated December 30, 2002, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on d1. X has one shareholder, A. On d2, A decided that X should be an S Corporation effective d3. However, a Form 2553, Election by a Small Business Corporation, was never 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 d3.

LAW AND ANALYSIS

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

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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 d3, 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 d3. However, this ruling is contingent on X filing a completed Form 2553 with an effective date of d3, 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 facts described above under any other provision of the Code. 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 yours,

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

Enclosure:

Copy for § 6110 purposes