

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-102367-03

Date:

April 30, 2003

X =

A =

d1 =

d2 =

State =

Dear :

We received your letter dated December 30, 2002, and subsequent correspondence, submitted on behalf of X requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to your request.

X was incorporated under State law on d1 and began doing business on d2. X's sole shareholder, A, intended for X to be an S corporation effective d2.

X retained an accountant and an attorney to assist X in filing an election to be treated as an S corporation. However, Form 2553, Election by a Small Business Corporation, was never filed.

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that an election may be made by a small business corporation for any taxable year at anytime during the preceding taxable year or at any time during the taxable year on or before the 15th day of the third month of the taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the taxable year is treated as having been made for the following taxable year.

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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 this subsection for making such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to make such election, the Secretary may treat such an election as timely made for such taxable year (and § 1362(b)(3) shall not apply).

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make an S election and that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553, Election by a Small Business Corporation, containing an effective date of d2, within 60 days of the date of this letter, then such election shall be treated as timely made for X's taxable year beginning d2. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except as specifically set forth herein, we express or imply no opinion concerning the federal tax consequences of the transaction described above under other provisions of the Code. Specifically, we express or imply no opinion concerning whether X is an S corporation for federal tax purposes.

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.

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

Sincerely yours,

Christine Ellison
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

A copy of this letter

A copy for §6110 purposes