

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-126052-03
Date:
September 9, 2003

Legend

X =

State =

A =

d1 =

Dear :

This letter responds to a letter dated April 14, 2003, and subsequent correspondence, requesting a ruling on behalf of X under § 1362(b)(5) of the Internal Revenue Code.

The information submitted discloses that X was formed on d1 under the laws of State. A, X's sole shareholder, represents that he intended that X be an S corporation beginning d1. However, X's S election was not timely filed. X filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for its taxable year beginning d1.

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 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 after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) 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 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 a timely S election for its taxable year that began on d1, and is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a Form 2553, Election by a Small Business Corporation, with an effective date of d1, with the appropriate service center within 60 days from 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.

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.

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

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.

Sincerely yours,

JAMES A. QUINN
Senior Counsel, Branch 3
Office of the Associate
Chief Counsel
(Passthroughs and Special
Industries)

Enclosure:

Copy of this letter
Copy for section 6110 purposes

cc: