

INTERNAL REVENUE SERVICE  
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CC:DOM:P&SI:3 PLR-116833-98

October 23, 1998

LEGEND

Company =

D1 =

State =

Dear :

This responds to a letter dated August 21, 1998, submitted by your authorized representative on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that Company's S corporation status will be effective beginning D1.

FACTS

According to the information submitted, Company was incorporated in State on D1 with the intention that Company would be an S corporation from its inception. Company's Form 2553, Election by a Small Business Corporation, however, was not timely filed.

Company requests a ruling that it will be recognized as an S corporation effective D1 under § 1362(b)(5).

LAW

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

Section 1362(b) provides the rule on when an S election will be effective. If an S election 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 for the year in which the election is made. If an S election is made after the first two and one-half months of a corporation's taxable year,

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then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) no election is made under § 1362(a) for any taxable year, and (2) 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 effective as of the first day of its tax year.

#### CONCLUSIONS

After applying the relevant law to the facts submitted and representations made, we conclude that Company has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing a completed Form 2553, containing an effective date of D1 for the election, within 60 days following 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 appropriate service center. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company is an S corporation for federal tax purposes.

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Under a power of attorney on file in this office, a copy of this letter will be sent to your 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,

Jeff Erickson  
Assistant to the Branch Chief,  
Branch 3  
Office of the Assistant Chief  
Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes