

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-130165-00

Date:

April 10, 2001

Legend

Company =

A =

State =

Date 1 =

Dear

This letter responds to your letter dated November 3, 2000, and subsequent correspondence submitted on behalf of Company, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was incorporated in State on Date 1. The sole shareholder of Company is A. It is represented that Company intended to be an S corporation effective Date 1, the date Company first began doing business as an S corporation. A reported income and losses from Company on A's federal income tax return for taxable years beginning Date 1. Subsequently, it was discovered that Company's Form 2553, Election by a Small Business Corporation, had not been timely filed.

Company requests a ruling that its section 1362(a) election will be treated as timely made under section 1362(b)(5) effective for its taxable year beginning Date 1.

LAW AND ANALYSIS

Section 1362(a) generally 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 beginning 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 after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election or no section 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year.

CONCLUSIONS

After applying the law to the facts submitted and the representations made, we conclude that Company has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). This ruling is contingent on Company filing Form 2553 with an effective date of Date 1 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 filed with the Service Center. Additionally, this ruling is conditioned on Company filing Form 1120S, U.S. Income Tax for an S Corporation, for taxable years beginning Date 1 through the present. A copy of this letter should be attached to each return.

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.

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

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes