

**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-145780-01

Date:

February 20, 2002

Legend

Corporation =

Shareholder =

State =

Date 1 =

Dear :

This letter responds to a letter dated August 16, 2001, and subsequent correspondence, requesting a ruling on behalf of Corporation under § 1362(b)(5) of the Internal Revenue Code.

Corporation was incorporated in State on Date 1 with one shareholder, Shareholder. Shareholder represents that he intended to elect S corporation status for Corporation effective Date 1. However, Corporation failed to file timely its election to be treated as an S corporation.

Corporation requests a ruling that its § 1362(b) election will be treated as timely made for its taxable year that began on Date 1.

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation for federal tax purposes.

Section 1362(b) provides the rule for when an S election will be effective. Generally, if an election to be treated as an S corporation is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated

PLR-145780-01

as an S corporation beginning in the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as having made an effective election to be treated as an S corporation for federal tax purposes until the following taxable year.

Section 1362(b)(5) provides that if an election to be treated as an S corporation for federal tax purposes is either made untimely, pursuant to § 1362(b), or not made at all, and the Secretary determines that there was reasonable cause for the failure to make a timely election, then the Secretary may treat the corporation as having made a timely election and § 1362(b)(3) will not apply.

Based on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for failing to make a timely election pursuant to § 1362(b)(5) and that Corporation is eligible for relief under § 1362(b)(5). Accordingly, provided Corporation makes an election to be treated as an S corporation for federal tax purposes by filing a completed Form 2553, containing an effective date of Date 1 for the election, with the appropriate Service Center 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 Service Center. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any provision of the Internal Revenue Code. Specifically, we express or imply no opinion concerning whether Corporation is an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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

Enclosures:

Copy of this letter  
Copy for § 6110 purposes