

**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-169035-01  
Date:  
February 22, 2002

**LEGEND**

Company =

A =

Date 1 =

Dear :

This letter responds to your letter, dated December 18, 2001, written on behalf of Company requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

The information submitted states that Company's first taxable year began on Date 1. A, the president of Company and Company's sole shareholder, intended for Company to be treated as an S corporation for federal tax purposes as of Date 1 and relied on his attorney to file the election. However, no Form 2553, Election by a Small Business Corporation, was filed timely with the Internal Revenue Service.

**LAW AND ANALYSIS**

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, 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) an election under § 1362(a) is made for any

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taxable year after the date prescribed by § 1362 for making the election or no § 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.

### CONCLUSION

Based on the facts submitted and the representations made, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation and is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553, containing an effective date of Date 1, 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.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether Company was or is a small business corporation under § 1361(b) of the Code.

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

Enclosures (2)  
Copy of this letter  
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