

**Internal Revenue Service**

Department of the Treasury

Number: **200245021**  
Release Date: 11/8/2002  
Index Number: 1362.01-02; 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-120665-02  
Date:  
August 1, 2002

**Legend**

- X =
- Y =
- A =
- B =
- C =
- D1 =
- D2 =
- D3 =
- D4 =
- Y1 =
- Y2 =
- Y3 =

Dear \_\_\_\_\_ :

This letter responds to your request dated March 20, 2002, and subsequent submissions submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### **FACTS**

X incorporated as Y on D1 and elected to be an S corporation effective D2. X revoked its S corporation election under § 1362(d) effective for its taxable year beginning D3 and subsequently filed as a C corporation for Y1 and Y2. A and B, the shareholders of X in Y3, intended X to re-elect to be an S corporation effective D4. A and B relied on their accountant to file Form 2553, Election by a Small Business Corporation. Form 2553, however, was not filed timely. X currently has three shareholders: A, B, and C.

X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that began on D4.

### **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 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 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 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 and § 1362(b)(3) shall not apply.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after the first taxable year for which such termination is effective, unless the Secretary of the Treasury consents to such election.

However, § 1317(b) of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (1996), provides that for purposes of § 1362(g), any termination under § 1362(d) in a taxable year beginning before January 1, 1997, is not taken into account. Thus, a small business corporation that had terminated its S corporation election in a

taxable year beginning before January 1, 1997, may re-elect to be an S corporation without regard to the termination.

X's S corporation election terminated in a taxable year beginning before January 1, 1997. Thus, the five-year period provided in § 1362(g) does not apply to X.

### **CONCLUSIONS**

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely S election and is eligible for relief under § 1362(b)(5). Accordingly, X's S corporation election will be treated as timely made for its taxable year that began on D4. This ruling is contingent on X filing Form 2553 with an effective date of D4, 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.

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. Specifically, we express or imply no opinion concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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,  
Mary Beth Collins  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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

cc: