

**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-142160-02  
Date:  
January 10, 2003

**Legend**

Company =

Shareholders =

State =

Date 1 =

Date 2 =

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

This letter responds to a letter dated June 28, 2002, and subsequent correspondence submitted by Company's authorized representative, requesting a ruling on behalf of Company under § 1362(b)(5) of the Internal Revenue Code.

### **FACTS**

Company was incorporated in State on Date 1. On Date 2, Company issued shares and commenced operations. Shareholders, all of the shareholders of Company, intended that Company elect to be an S corporation, effective Date 2. The organizational minutes of Company dated Date 2 provides evidence of this intent.

Company's attorney prepared Form 2553, Election by a Small Business Corporation, and sent it to Company's President. The Form 2553 was inadvertently misplaced and as a result was not timely filed.

### **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. 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 following 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 such election, the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

### **CONCLUSIONS**

Based on facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S election and that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing a Form 2553 with an effective date of Date 2,

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with the appropriate Service Center within 60 days from the date of this ruling, Company's § 1362(a) election will be treated as timely made for its taxable year that began on Date 2. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion on whether Company otherwise qualifies as an S corporation.

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.

Pursuant to a power of attorney on file in this office, we are sending a copy of this letter to Company's authorized representative.

Sincerely,

/s/

James A. Quinn  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes