

**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- 112330-02  
Date:  
February 28, 2003

**Legend**

X =

A =

B =

State =

D1 =

D2 =

Y1 =

:

This letter responds to your request dated January 16, 2002, and subsequent submissions submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated in State on D1 and began doing business in Y1. A and B are shareholders of X. A became a shareholder on D1 and B became a shareholder on D2. X represents that it filed a Form 2553, Election by a Small Business Corporation, to elect S Corporation status. However, X's Form 2553 was not timely filed. X, A, and B have filed their federal income tax returns as if X were an S corporation effective Y1.

X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that begins on Y1.

### **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 § 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.

### **CONCLUSIONS**

Based upon the information submitted and representations made, we conclude that X has established reasonable cause for not making a timely 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 begins on Y1. This ruling is contingent on X filing Form 2553, Election by a Small Business Corporation, with an effective date of Y1, 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.

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

Sincerely,

*/s/*

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

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes