

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:3 – PLR-127702-04

Date:

June 15, 2004

Company:

Shareholders:

State:

a:

Dear _____ :

This letter responds to your letter dated May 13, 2004, as well as subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that Company's presumptively late election under § 1362(a) to be an S corporation will be treated as timely made.

FACTS

Company was incorporated under the laws of State on a. Shareholders intended Company to be an S corporation from inception; however, Form 2553 (Election by a Small Business Corporation) was not timely filed with the Internal Revenue Service. Company filed Form 1120S (U.S. Income Tax Return for an S Corporation) for its first tax year, and Shareholders filed Form 1040 (U.S. Individual Income Tax Return) for the same year, consistent with Company's intended status as an S corporation.

LAW AND ANALYSIS

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Section 1362(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year—

- (A) at any time during the preceding tax year, or
- (B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if--

- (A) a small business corporation makes an election under § 1362(a) for any tax year, and
- (B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year,

then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if--

- (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for that tax year or no such election is made for any tax year, and
- (B) the Secretary determines that there was reasonable cause for the failure to timely make the election,

the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based on the facts and representations submitted, we conclude that there was reasonable cause for Company's failure to make a timely S corporation election. Therefore, Company's election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning a. This ruling is contingent on Company filing Form 2553, to be effective on a, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion on whether Company otherwise is eligible to be an S corporation. However, an officer of a corporation who performs more

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than minor services (and who either receives or is entitled to receive any remuneration, directly or indirectly) is an employee of the corporation, and payments by an S corporation to a corporate officer must be treated as wages for federal employment tax purposes to the extent the amounts are reasonable compensation for services to the corporation.

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 on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

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

enclosures: copy of this letter
copy for § 6110 purposes

cc: