

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:BR3-PLR-129479-00
Date:
April 6, 2001

Legend

Company =
State =
Year 1 =
Date 1 =
Shareholders =

Dear

This letter responds to a letter dated November 29, 2000, submitted on behalf of Company, requesting a ruling under Internal Revenue Code section 1362(b)(5).

FACTS

According to the information submitted, Company was incorporated in State on Date 1. It is represented that Company intended to be an S corporation since its formation. Company filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1 and Company's shareholders reported the information contained in the Schedule K-1's, Shareholder's Share of Income, Credits, Deductions, etc., on their individual income tax returns. Company later discovered that its Form 2553, Election by a Small Business Corporation, had not been timely filed. Company requests a ruling that its section 1362(a) election will be treated as timely made for Year 1 under section 1362(b)(5).

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

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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 section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election or no section 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

After applying the law to the facts submitted and the representations made, we conclude that Company has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). This ruling is contingent on Company filing Form 2553, Election by a Small Business Corporation, with an effective date of Date 1, 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, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company otherwise qualifies to be an S corporation for federal tax purposes.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by an appropriate penalty of perjury statement. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,
Donna Marie Young
Acting Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes