

## Internal Revenue Service

Department of the Treasury

Number: **200130028**  
Release Date: 7/27/2001  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-109968-01

Date:

April 30, 2001

### **Legend**

Company =

A =

B =

Date 1 =

Date 2 =

Dear

This responds to your letter dated January 27, 2001, and subsequent submissions, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

### **FACTS**

According to the information submitted, Company was incorporated on Date 1. It is represented that Company intended to be an S corporation effective Date 2, the date Company first had shareholders. The shareholders of Company are A and B. It was discovered that Company's Form 2553, Election by a Small Business Corporation, had not been timely filed.

Company requests a ruling under section 1362(b)(5) that its section 1362(a) election will be treated as timely made for its taxable year that begins on Date 2.

### **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 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 with an effective date of Date 2, 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 is an S corporation for federal tax purposes.

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.

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

Sincerely,  
Mary Beth Collins  
Assistant to the Branch Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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