

**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-129403-02  
Date:  
October 31, 2002

**Legend**

Company =

A =

B =

State =

d1 =

d2 =

Year =

Dear :

This letter responds to your letter dated May 16, 2002, and subsequent correspondence, requesting a ruling on behalf of Company under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

Company was incorporated in State on d1. A and B are Company's shareholders. In late Year, A and B decided that Company should be an S corporation effective d2. Due to inadvertence, Form 2553, Election by a Small Business Corporation, was not timely filed.

PLR-129403-02

Company requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year that began on d2.

### **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 the 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 d2 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 d2. 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 as to whether Company 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.

PLR-129403-02

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

/s/

Mary Beth Collins  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes