

**Internal Revenue Service**

Department of the Treasury

Number: **200332017**  
Release Date: 8/8/2003  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-158592-02  
Date:  
April 11, 2003

Legend

Corporation =

Shareholders =

State =

Date 1 =

Date 2 =

Date 3 =

:

This letter responds to a letter dated October 10, 2002, requesting a ruling on behalf of Corporation under § 1362(b)(5) of the Internal Revenue Code.

Shareholders incorporated Corporation in State on Date 1. It is represented that Corporation has intended to be taxed as an S corporation since Date 1, and that Corporation executed a Form 2553 (Election by a Small Business Corporation) on Date

PLR-158592-02

2. In addition, Corporation represents that it filed a Form SS-4 Application for Employer Identification Number, signed on Date 1, that describes Corporation as an S Corporation. It is further represented that Corporation filed, untimely, Form 1120S (U.S. Income Tax Return for an S corporation) for its first tax year on Date 3 and filed timely Form 1120S for its second tax year on Date 3. Corporation has discovered that the Internal Revenue Service has no record of Corporation filing the Form 2553 (Election by a Small Business Corporation).

Corporation requests a ruling that its § 1362(b) election will be treated as timely made for its taxable year that begins on Date 1.

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 election to be treated as an S corporation is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation beginning in the year in which the election is made. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as having made an effective election to be treated as an S corporation for federal tax purposes until the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for failing to make a timely election pursuant to § 1362(b)(5). Accordingly, Corporation's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning Date 1. This ruling is contingent, however, on Corporation (1) obtaining the consent of all shareholders, current and former; and (2) filing a completed Form 2553, containing an effective date of Date 1 for the election, with the appropriate Service Center within 60 days following the date of this letter. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

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 Internal Revenue Code. Specifically, we express or imply no opinion concerning whether Corporation is an S corporation for federal tax purposes.

PLR-158592-02

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.

Sincerely yours,

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