

**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-116537-00

Date:

February 23, 2001

**LEGEND:**

X =

A =

Shareholders =

D1 =

D2 =

D3 =

Dear

This letter responds to a letter, dated August 22, 2000, and subsequent correspondence, written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that X's S corporation status will be effective as of the taxable year beginning D3.

**FACTS**

According to the information submitted, X was incorporated on D1 by A. On or before D2, Shareholders acquired from A all rights to X. X commenced business and acquired assets on D3. Shareholders intended that X would be an S corporation effective D3. Shareholders relied on an attorney to file X's Form 2553, Election by a Small Business Corporation, with an effective date of D3. X's Form 2553, however,

was not timely filed.

X requests a ruling that it will be recognized as an S corporation beginning D3 under § 1362(b)(5).

### **LAW AND ANALYSIS**

Section 1362(a) 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 for a corporation's taxable year and within the first two and one half months of such taxable year, then that corporation will be treated as an S corporation beginning the year in which the election is made. However, if an S election is made for a corporation's taxable year but after the first two and one half months of the beginning of such 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 § 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 the election, then the Secretary may treat the election as timely made for such taxable year.

### **CONCLUSIONS**

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is eligible for

relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of D3 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. 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, 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 X is an S corporation for federal tax purposes.

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.

Pursuant to a power of attorney on file with this office, we are sending you the

original of this letter and a copy of this letter to X.

Sincerely yours,  
Donna M. Young  
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