

## 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-164224-01

Date:

May 28, 2002

### Legend

Company =

A =

B =

State =

d1 =

d2 =

Dear :

This letter responds to your letter dated October 30, 2001, and subsequent correspondence, requesting a ruling on behalf of Company under Internal Revenue Code § 1362(b)(5).

### FACTS

Company was incorporated in State on d1. Company's shareholders, A and B, represent that on d1 and at all times thereafter, they intended that Company elect to be treated as an S corporation. Since d1, A and B have treated Company as an S corporation, including filing forms 1120S for the tax year ending d2 and each subsequent tax year. However, the Form 2553 was not timely filed with the appropriate service center.

### 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

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is made after the first two and one half months of a Corporation's taxable year, 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 facts submitted and representations made, we conclude that Company has established reasonable cause for its failure to make a timely 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 d1 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 begins on d1. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we neither express nor imply any opinion as to whether Company qualifies as an S corporation.

This ruling is directed only to the taxpayer(s) requesting 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 representative.

Sincerely,  
Christine E. Ellison  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

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

cc: