

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

April 17, 2001

Legend

Corporation =

Date 1 =

Date 2 =

Shareholder =

Dear

This letter responds to a letter dated October 5, 2000, and subsequent correspondence, written on behalf of Corporation, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code that Corporation's S corporation election be effective as of Date 2.

Facts

According to the information submitted, Corporation was incorporated on Date 1. Corporation intended to elect to be an S corporation under section 1362(a) effective as of Date 2. However, the Form 2553, Election by a Small Business Corporation, was not timely filed.

Corporation requests a ruling that it will be recognized as an S corporation as of Date 2 under section 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) governs the effective date of an S election. 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. 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

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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.

Conclusion

Based solely on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). Accordingly, provided Corporation makes an election to be an S corporation by filing a completed Form 2553, containing an effective date of Date 2 for the election, with the appropriate Service Center 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 Corporation is an S corporation for federal tax purposes.

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

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,
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 section 6110 purposes