

Internal Revenue Service

Department of the Treasury

Number: **200144022**

Washington, DC 20224

Release Date: 11/2/2001

Index Number: 1362.01-03

Person to Contact:

Telephone Number:

(202) 622-3070

Refer Reply To:

CC:PSI:3 PLR-125817-01

Date:

August 6, 2001

Company:

State:

Shareholders:

Year:

Date 1:

Date 2:

Dear

This letter responds to a letter dated April 23, 2001, from your authorized representative, submitted on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code regarding Company's late S corporation election.

FACTS

Company began as a sole-proprietorship in Year and was incorporated in State on Date 1 with two Shareholders. Company represents that it intended to be an S corporation from inception, but Form 2553 (Election by a Small Business Corporation) was not filed timely. Company filed Form 1120 (U.S. Corporation Income Tax Return) for its tax year ending Date 2.

LAW AND ANALYSIS

Section 1362(b)(1) provides that, in general, an election by a small business corporation under § 1362(a) to be an S corporation may be made for any taxable year--

(A) at any time during the preceding taxable year, or

PLR-125817-01

(B) at any time during the taxable year and on or before the 15th day of the 3d month of the taxable year.

Section 1362(b)(3) provides that if--

(A) a small business corporation makes an election under § 1362(a) for any taxable year, and

(B) that election is made after the 15th day of the 3d month of the taxable year and on or before the 15th day of the 3d month of the following taxable year, then that election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if--

(A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by this subsection for making the election for that taxable year or no such election is made for any taxable year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such election as timely made for that taxable year (and § 1362(b)(3) shall not apply).

Based solely on the facts and representations submitted by Company, we conclude that there was reasonable cause for Company's failure to make a timely S corporation election. Therefore, we conclude that Company's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its first tax year beginning Date 1. This ruling is contingent on--

- 1) Company filing Form 2553, to be effective on Date 1, with the appropriate service center no later than 60 days from the date of this letter (a copy of this letter should be attached to the Form 2553), and
- 2) Company and Shareholders filing amended income tax returns for the tax year ending on Date 2 with the appropriate service center no later than 60 days from the date of this letter.

Except for the specific ruling above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion on whether Company otherwise is eligible to be an S corporation.

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

PLR-125817-01

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,
CHRISTINE ELLISON
Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

enclosure: copy of this letter
copy for § 6110 purposes

cc: