

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:3-PLR-110583-99

Date:

October 12, 1999

### Legend

A =

Corporation =

D1 =

D2 =

Month =

This letter responds to a letter dated April 21, 1999, submitted on behalf of Corporation, requesting a ruling under section 1362(b)(5) of the Code that Corporation's S corporation election will be effective as of D2.

### **Facts**

A incorporated his business, Corporation, on D1. A had previously operated the business as a sole proprietorship. A intended for Corporation to be taxed as an S corporation effective D2. Due to a miscommunication between A, A's attorney, and A's accountant, Form 2553, Election by a Small Business Corporation, was never filed. In Month, Corporation filed Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, requesting an extension of time for Corporation to file Form 1120S, U. S. Income Tax Return for a Small Business Corporation. At that time, the failure to file the Form 2553 was discovered.

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Corporation requests a ruling that it will be recognized as an S corporation beginning D2.

### **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. 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. 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 corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if: (1) 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 such election, then the Secretary may treat such an election as timely made for such taxable year.

### **Conclusion**

Based solely on the facts and representations submitted, 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 with the appropriate Service Center a completed Form 2553, containing an effective date of D2 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, we express no opinion 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, in fact, an S corporation for federal tax purposes.

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

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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,

William P. O'Shea  
Chief, Branch 3  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for Section 6110 purposes

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