Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-122962-01
Date:
August 13, 2001

Company:

State:

Shareholders:

Date:

Dear

This letter responds to a letter dated March 30, 2001, from your authorized representative, as well as subsequent correspondence, 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 was incorporated in State on Date. Corporate shares were issued subsequently to 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 timely filed. Company did not file a corporate tax return, either Form 1120 or Form 1120S, for its first tax year.

LAW AND ANALYSIS

Section 1362(b)(1) provides that, in general, that 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

(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).

Section 1.1362-6(a)(2)(ii)(C) of the Income Tax Regulations provides that the taxable year of a new corporation begins on the date that the corporation has shareholders, acquires assets, or begins doing business, whichever is the first to occur. The existence of incorporators does not necessarily begin the taxable year of a new corporation.

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 on the first day of that tax year, as determined under § 1.1362-6(a)(2)(ii)(C). This ruling is contingent, however, on Company filing Form 2553, to be effective on the first day of its first tax year, 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.

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 regarding Company's eligibility otherwise to be an S corporation or its failure to file a corporate tax return for its first tax year.

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

PLR-122962-01

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