

## 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-118130-01

Date:

July 10, 2001

### LEGEND:

X =

Shareholders =

D1 =

Dear

This letter responds to a letter dated November 22, 2000, requesting a ruling on behalf of X under § 1362(b)(5) of the Internal Revenue Code.

### FACTS:

According to the information submitted, X was incorporated on D1. X has two shareholders, Shareholders. It is represented that X intended to be taxed as an S corporation and that its Shareholders believed that a timely S election had been made. However, Form 2553, Election by a Small Business Corporation, was not timely filed.

X requests a ruling under § 1362(b)(5) that its § 1362(a) election will be treated as timely made for its taxable year beginning on D1.

### LAW & ANALYSIS:

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides 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 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 following the year in which the S

election is made.

Section 1362(b)(5) provides that if no § 1362(a) election is made for any taxable year and 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 and § 1362(b)(3) shall not apply.

CONCLUSIONS:

Applying the relevant law to the facts submitted and representations made, we rule that X's § 1362(a) election will be treated as timely made for its taxable year beginning on D1. However, this ruling is contingent on X filing Form 2553, with an effective date of D1, with the appropriate Service Center within 60 days from the date of this ruling. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

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 X otherwise qualifies as an S corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely yours,  
Mary Beth Collins  
Assistant to the Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes