

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

February 27, 2001

LEGEND

X =
A =
State =
d1 =

Dear

This letter responds to a letter dated November 1, 2000, and subsequent correspondence, submitted by your authorized representative on behalf of X, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a corporation that was incorporated in State on d1. X has one shareholder, A. It is represented that X had intended to be an S corporation since its incorporation. However, X discovered that its S election had not been timely filed. X requests a ruling that its section 1362(a) election will be treated as timely made for its taxable year that begins on d1.

LAW AND ANALYSIS

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

Section 1362(b) explains 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 section 1362(a) election is made for any

taxable year, and 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 and section 1362(b)(3) shall not apply.

CONCLUSIONS

Applying the relevant law to the facts submitted and representations made, we rule that X's section 1362(a) election will be treated as timely made for its taxable year that begins on d1. However, this ruling is contingent on X filing Form 2553, Election by a Small Business Corporation, 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.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing facts. Specifically, we express no opinion on whether X otherwise qualifies as 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.

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.

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