

**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:  
PLR-122163-98 CC:DOM:P&SI:3  
Date:  
February 18, 1999

LEGEND

Company =

d1 =

d2 =

Dear

This letter responds to a letter dated October 20, 1998, and subsequent correspondence, submitted by your authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was incorporated on d1, with the intention that it would be an S corporation effective d2. However, Company's Form 2553, Election by a Small Business Corporation, was not timely filed.

Company requests a ruling that it will be recognized as a subchapter S corporation effective d2 pursuant to § 1362(b)(5) of the Internal Revenue Code.

LAW

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

Section 1362(b) provides the rule on when an S election will be effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then the 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 the 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 election is made under § 1362(a) for

any taxable year, and (2) 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 the taxable year and effective as of the first day of the corporation's taxable year.

### CONCLUSIONS

After applying the relevant law to the facts submitted and representations made, we conclude that Company has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, if Company 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 the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the appropriate service center. A copy is enclosed for that purpose.

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 Company is an S corporation for federal tax purposes.

Under a power of attorney on file in this office, a copy of this letter will be sent 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,

Jeff Erickson  
Assistant to the Branch Chief,  
Branch 3  
Office of the Assistant Chief  
Counsel  
(Passthroughs and Special  
Industries)

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