

**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-106135-03  
Date:  
April 1, 2003

Legend

X =

A =

State =

Date 1 =

:

This letter responds to a letter dated January 17, 2003, requesting a ruling on behalf of X under § 1362(b)(5) of the Internal Revenue Code.

The information submitted provides that A incorporated X in State on Date 1. A represents that A intended for X to be taxed as an S corporation since Date 1, but that A failed to prepare and file Form 2553, Election by a Small Business Corporation. A further represents that X and A filed their federal tax returns for X's first taxable year beginning Date 1, consistent with the treatment of X as an S corporation.

Section 1362(a) generally 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 election to be treated as an S corporation 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 beginning in the year in which the election is made. If the 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 having made an effective election to be treated as an S corporation for federal tax purposes until the following taxable year.

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Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no 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 election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely S election pursuant to § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a Form 2553 with an effective date of Date 1, with the appropriate service center within 60 days from the date of this ruling, then X's S election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

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

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: