

**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-152293-02  
Date:  
April 25, 2003

X =

A =

B =

C =

D =

E =

F =

G =

d1 =

State =

PLR-152293-02

Dear \_\_\_\_\_ :

This letter responds to your letter dated September 12, 2002, on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

X was incorporated under State law on d1 and intended to be treated as an S corporation for federal income tax purposes. X retained an accountant to assist with the filing of an election to be treated as an S corporation. However, the accountant failed to advise X properly and a Form 2553, Election by a Small Business Corporation, was not filed timely.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning d1.

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that an election may be made by a small business corporation for any taxable year at anytime during the preceding taxable year or at any time during the taxable year on or before the 15<sup>th</sup> day of the third month of the taxable year. Section 1362(b)(3) provides that an election made after the 15<sup>th</sup> day of the third month of the taxable year is treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if 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 such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to make such election, the Secretary may treat such an 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 was eligible to make an S election pursuant to § 1362(a) and has established reasonable cause for failing to make such election in a timely manner. Thus, based on the facts submitted and representations made, we conclude that X is eligible for relief under § 1362(b)(5) and that X's § 1362(a) election will be treated as timely made for its taxable year that began on d1. However, this ruling is contingent on X filing with the appropriate Service Center, within 60 days from the date of this ruling, a completed Form 2553, Election by a Small Business Corporation, containing as an effective date, d1. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

PLR-152293-02

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

Christine Ellison  
Chief, Branch 3  
Office of the Associate Chief Counsel  
Passthroughs and Special Industries

Enclosures (2)

A copy of this letter

A copy for §6110 purposes