

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:3-PLR-110966-99

Date:

October 14, 1999

### Legend

A =

Corporation =

D1 =

D2 =

D3 =

D4 =

This letter responds to a letter dated June 4, 1999, submitted on behalf of Corporation, requesting a ruling under section 1362(b)(5) of the Code that Corporation's S corporation election will be effective as of D2.

### **Facts**

Corporation was incorporated on D1. Shares of Corporation were issued to A, the sole shareholder, on D2. On D3, A and the director of Corporation held a meeting approving the election of S corporation status. A corporate resolution was executed on D3 indicating that Corporation would take those actions required to elect S corporation status. Corporation's accountants prepared a Form 2553, Election by a Small Business

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Corporation, on D3. However, the Form 2553 was never filed. Corporation began doing business on D4.

Corporation requests a ruling that it will be recognized as an S corporation as of its first taxable year, beginning D2.

### **Analysis**

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

Section 1362(b) governs the effective date of an S election. 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. 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 after the year in which the S election is made.

Section 1362(b)(5) provides that if: (1) no section 1362(a) election is made for any taxable year, and (2) 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.

### **Conclusion**

Based solely on the facts and representations submitted, we conclude that Corporation has established reasonable cause for not making a timely election and is eligible for relief under section 1362(b)(5). Accordingly, provided Corporation 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 such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

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

Pursuant to a power of attorney on file with this office, a copy of this ruling is being sent to your authorized representative.

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

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Sincerely,

William P. O'Shea  
Chief, Branch 3  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes