Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3 PLR-104476-99
Date:
May 24, 1999

Legend

Company =

State =

Shareholders =

a =

b =

Dear

This letter responds to a letter dated January 29, 1999, requesting a ruling on behalf of Company under § 1362(b)(5) of the Internal Revenue Code.

The information submitted discloses that Company was incorporated on a in State. Company has two shareholders, Shareholders. It is represented that Company has intended to be an S corporation since its incorporation.

Believing itself to be an S corporation, Company has operated accordingly since b. After the end of its taxable year beginning on b, however, Company discovered that its S election had not been timely filed.

Company requests a ruling that its § 1362(a) election will be treated as timely made for its taxable year that begins on b.

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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 § 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 § 1362(b)(3) shall not apply.

Applying the relevant law to the facts submitted and representations made, we rule that Company's § 1362(a) election will be treated as timely made for its taxable year that begins on b. However, this ruling is contingent on Company filing Form 2553, Election by a Small Business Corporation, with an effective date of b, 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 Company otherwise qualifies as an S corporation.

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,

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

Enclosure:
Copy for section 6110 purposes