

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:BR3 PLR-139158-01

Date:

November 19, 2001

**Legend**

X =

A =

B =

State =

Y1 =

D1 =

Dear

This letter responds to your request dated July 12, 2001, and subsequent submissions submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated in State on D1. The shareholders of X are A and B. It is represented that X intended to be an S corporation since its formation on D1, but its Form 2553, Election by a Small Business Corporation, was not filed timely.

**LAW AND ANALYSIS**

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 S

Number:

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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 beginning 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 after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election or no § 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 the election, then the Secretary may treat the election as timely made for such taxable year.

### **CONCLUSIONS**

Based upon the information submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, X's S corporation election will be treated as timely made for Y1. This ruling is contingent on X filing Form 2553, Election by a Small Business Corporation, with an effective date of D1, 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 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 Code. Specifically, we express or imply no opinion concerning whether X otherwise qualifies as an S corporation for federal tax purposes.

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.

Sincerely,  
Jeanne Sullivan  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes