

**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-158017-01  
Date:  
April 26, 2002

**Legend**

Company =

A =

State =

D1 =

D2 =

D3 =

Dear :

This letter responds to your letter dated September 10, 2001, requesting a ruling on behalf of Company under Internal Revenue Code §1362(b)(5).

**FACTS**

Company was incorporated in State on D1. Company's sole shareholder, A, asserts that on D2, Company first issued shares to A.

A has represented that after D2, Company's legal representative prepared a Form 2553, Election by Small Business Corporation, and sent such form to A. A and

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A's spouse signified their consent to the classification of Company as an S corporation by signing the Form 2553 and returned the form to Company's legal representative. Company's legal representative failed to file the executed Form 2553.

A represents that, at all times since D2, A has treated Company as an S corporation, including causing Company to file Form 1120S for the tax year ending D3.

### **LAW AND ANALYSIS**

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

Section 1362(b) provides the rule on 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, 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 (1) an election under §1362(a) is made for any taxable year after the date prescribed by §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 such election, the Secretary may treat such an election as timely made for such taxable year and §1362(b)(3) shall not apply.

### **CONCLUSIONS**

Based on facts submitted and representations made, we conclude that Company has established reasonable cause for its failure to make a timely election and that Company is eligible for relief under §1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing a Form 2553 with an effective date of D2 with the appropriate Service Center within 60 days from the date of this ruling, Company's §1362(a) election will be treated as timely made for its taxable year that begins on D2. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we neither express nor imply any opinion as to whether Company otherwise qualifies as an S corporation.

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

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

Sincerely,

*/s/*

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

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes