

**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-128543-02

Date:

September 30, 2002

**LEGEND**

X =

Shareholders =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter, dated May 14, 2002, written on behalf of X requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

The information submitted states that X was incorporated on Date 1. It is represented that Shareholders intended for X to be treated as an S corporation for federal tax purposes as of Date 1. X filed its federal tax return for the year ending Date 2 as an S corporation. However, no Form 2553, Election by a Small Business Corporation, was timely filed with the Internal Revenue Service. X requests that it be treated as an S corporation as of Date 1 pursuant to § 1362(b)(5).

**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. If an S election is made within the first two and one-half months of a corporation's taxable year, then the 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 the 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 §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 the election, then the Secretary may treat the election as timely made for such taxable year.

### **CONCLUSION**

Based on the facts represented and the information submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation and is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553, containing an effective date of Date 1, 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.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b).

Under a power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

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

Sincerely,

/s/

Jeanne M. 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.