

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B03-PLR-106399-02  
Date:  
December 3, 2002

LEGEND

X =

State =

d1 =

A =

B =

Dear :

This letter responds to your letter, dated January 15, 2002, and subsequent correspondence on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law on d1. At the time of its incorporation, X's shareholders, A and B, intended for X to be an S corporation. However, X's Form 2553,

Election by a Small Business Corporation, was not filed timely. X and X's shareholders have consistently filed their tax returns as if X were an S corporation.

X requests a ruling under § 1362(b)(5) that it will be recognized as an S corporation effective for the taxable year beginning d1.

### 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 the corporation will be treated as an S corporation for the taxable 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 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 for the taxable year 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 and § 1362(b)(3) shall not apply.

### CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election and that X 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 d1 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 expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is an S corporation for Federal tax purposes.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

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,

*/s/*

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