

**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-101784-02  
Date:  
October 30, 2002

LEGEND

X =

d1 =

d2 =

State =

Dear \_\_\_\_\_ :

Pursuant to a power of attorney on file with this office, this letter responds to your letter dated December 11, 2001, on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated under State law during d1 and was capitalized during the taxable year beginning d2. From formation X intended to be an S corporation for federal income tax purposes. X did not seek professional help in either its formation or election to be an S corporation for federal income tax purposes. As a result, X failed to file a Form 2553 Election by a Small Business Corporation.

X began operations during the taxable year beginning d2, at which point X and X's shareholders understood X to be an S corporation. Upon the filing of its first income tax return X was informed that a Form 2553 Election by a Small Business Corporation was not on file for X.

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X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning d2.

### LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that such election shall be effective for the current taxable year if it is made during the preceding taxable year or before the 15<sup>th</sup> day of the third month of the current taxable year. Section 1362(b)(3) provides that an election made after the 15<sup>th</sup> day of the third month of the current taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by this subsection for making such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to 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).

### CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make an S election in a timely manner. Thus, based on the facts submitted and representations made, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, we conclude that X's § 1362(a) Election will be treated as timely made for its taxable year that began on d2. However, this ruling is contingent on X filing with the appropriate Service Center a completed Form 2553 Election by a Small Business Corporation, containing as an effective date d2, 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. A copy is enclosed for that purpose.

This ruling is directed only to the taxpayer 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 with this office, we are sending a copy of this letter to the taxpayer.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the requested ruling, it is subject to verification on examination.

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Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of this 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.

Sincerely,

*/s/*

Jeanne 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