

**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-161977-01  
Date:  
May 29, 2002

**Legend**

Company =

A =

State =

d1 =

d2 =

d3 =

Dear :

This letter responds to your letter dated October 31, 2001, requesting a ruling on behalf of Company under Internal Revenue Code § 1362(b)(5).

**FACTS**

Company was incorporated in State and on d1, A, Company's sole shareholder, first acquired shares of Company. A represents that on d1 and at all times thereafter A intended that Company be regarded as an S corporation and has treated Company as an S corporation since d1, including causing Company to file forms 1120S for the tax year ending d2 and each subsequent tax year.

A has represented that on d3, A received a letter from the Internal Revenue Service indicating that the Form 1120S filed for the year ending d3 could not be processed as Company had not elected to be treated as an S corporation.

**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

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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. 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 qualifies as an S corporation.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

Sincerely,  
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