

## 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-100985-02

Date:

May 29, 2002

### Legend

Corporation =

Shareholder =

Date 1 =

Dear :

This letter responds to a letter dated November 27, 2001, and subsequent correspondence, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

### Facts

Corporation was incorporated on Date 1. Corporation has one shareholder, Shareholder. Shareholder intended Corporation to be taxed as an S corporation for federal tax purposes, however, a Form 2553, Election by a Small Business Corporation, was never filed by Corporation.

### Applicable Law

Section 1362(a) generally provides that a small business corporation may elect to be an S corporation for federal tax purposes.

Section 1362(b) governs the timeliness of such an election as well as its effective date. Generally, if an election to be treated as an S corporation 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 beginning in the year in which the election was made. If the 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 having made an effective election to be treated as an S corporation for federal tax purposes until the following taxable year.

Section 1362(b)(5) provides that if an election to be treated as an S corporation is either made untimely or not made at all, and the Secretary determines that there was

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reasonable cause for the failure to make a timely election, then the Secretary may treat the corporation as having made a timely election.

#### Conclusion

Based on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for failing to make a timely election to be an S corporation. Accordingly, provided Corporation makes an election to be treated as an S corporation by filing a completed Form 2553 with an effective date of Date 1 with the appropriate Service Center within 60 days from 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 and is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code. Specifically, we express or imply no opinion concerning whether Corporation is an S corporation for federal tax purposes.

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

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes

cc: