

## Internal Revenue Service

## Department of the Treasury

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### Legend

X =  
Y =  
Z =  
T =  
D1 =  
D2 =  
D3 =

This responds to a letter dated May 15, 2000, submitted on behalf of X, requesting rulings under sections 1362(b)(5) and 1362(f) of the Internal Revenue Code.

### Facts

Y and Z, a married couple in a community property state established T on D1. Taxpayer represents that T is a grantor trust within the meaning of § 671 through 679 of the Code. X was incorporated on D2. T held shares in X. Due to state law restrictions, the agreement creating T1 named Y, as sole Trustee of T, as the shareholder of X.

Y, the sole shareholder of X, had intended that X be treated as an S corporation effective on D2. On D3, Y adopted a resolution to that effect. Although both Y and Z held an interest in T, Y signed Form 2553 and Z did not. Once executed, Form 2553 was not timely filed. X requests a ruling under § 1362(b)(5) that it will be treated as an S corporation effective on D2 and under § 1362(f) waiving the effects of X's invalid § 1362(a) election.

### Law and Analysis

Section 1362(a) allows a small business corporation to elect to be an S corporation. Section 1362(b) provides the rule regarding when such an election will become effective. Section 1362(b)(2) states, in relevant part, that 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. Under § 1362(b)(3), however, 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 filed.

Section 1362(a)(2) provides that an election to be an S corporation shall be valid only if all persons who are shareholders in such corporation on the day on which the election is made consent to such election. Section 1.1362-6(b)(2)(iv) adds that when stock of a corporation is held by a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property.

Section 1362(b)(5) allows the Secretary to treat a late election as timely and disregard § 1362(b)(3) where: (1) the election is made after the prescribed date, and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election.

In the present situation, X did not timely file its election to be treated as an S corporation under § 1362(a)(1). X has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362(b)(5). Had X timely filed the election under § 1362(b), it may have been invalid under § 1362(a)(2) for lack of Z's signature, because Z holds a general community interest in T's property, by way of marriage to Y.

### Conclusions

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation from D2. Within 60 days from the date of this letter, X should submit a properly completed Form 2553 with the shareholder consents from both Y and Z and a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transactions described above under any other provision of this Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S Corporation eligibility requirements.

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 mailed to X.

Sincerely,  
Dianna K. Miosi, Chief, Branch 1  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes