

## Internal Revenue Service

Department of the Treasury

Number: **200313004**  
Release Date: 3/28/2003  
Index Number: 1361.01-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3-PLR-152376-02

Date:

December 16, 2002

### LEGEND

X =

A =

B =

d1 =

d2 =

State =

Dear :

This letter responds to a letter dated July 30, 2002, 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. X retained an attorney to aid in its incorporation and election to be an S corporation. X intended from incorporation to elect to be an S corporation for federal income tax purposes and directed its attorney to file a Form 2553 Election of a Small Business Corporation.

PLR-152376-02

Prior to the filing of its tax return for d2, X was informed that a Form 2553 had not been filed and it was not an S corporation Federal Income Tax purposes. X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning d1.

#### LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be a 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 such 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, if X makes an election to be a S corporation by filing with the appropriate Service Center a completed Form 2553, containing as an effective date d1, then such election shall be treated as timely made for X's taxable year beginning d1. 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.

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

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 request for rulings, it is subject to verification on examination.

PLR-152376-02

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 income tax purposes.

Sincerely,

/s/

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

Enclosures (2)

A copy of this letter

A copy for §6110 purposes