

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
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Date:
June 8, 2001

Legend

Company =

State =

Shareholders =

a =

b =

Dear

This letter responds to a letter dated March 2, 2001, and subsequent correspondence, requesting a ruling on behalf of Company that its S election under § 1362(a) of the Internal Revenue Code with an accompanying election under § 444 to have a fiscal year end will be treated as timely made under § 1362(b)(5).

The information submitted discloses that Company was incorporated on a in State. Company has four shareholders, Shareholders. It is represented that Company has intended to be an S corporation since a, with a fiscal tax year ending b based on a business purpose. Company filed Form 2553, Election by a Small Business Corporation, with its Service Center requesting a fiscal tax year ending b based on a business purpose. However, Company did not indicate either that it intended to make a back-up § 444 election in the event that its business purpose request was not approved or that it agreed to adopt a tax year ending December 31 if its business purpose request was not approved. Also, Company did not make a back-up § 444 election. Subsequently, Company discovered that its S election was not timely filed and its

request to have a fiscal tax year ending b was not accepted.

Company requests a ruling under § 1362(b)(5) that its § 1362(a) election with an accompanying § 444 election for a fiscal tax year ending b will be treated as timely made for Company's taxable year that begins on a.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) explains when an S election will be effective. Generally, if an S election is made within the first two and one half months of a 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, then 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 no § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely 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.

Section 444(a) provides that except as otherwise provided in § 444, a partnership, S corporation, or personal service corporation may elect to have a taxable year other than the required taxable year.

Section 1.444-3T(b)(1) of the Income Tax Regulations provides a § 444 election shall be made by filing a properly prepared Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, with the Service Center indicated by the instructions to Form 8716. Except as provided in § 1.444-3T(b)(2) and (4), Form 8716 must be filed the earlier of (i) the 15th day of the fifth month following the month that includes the first day of the taxable year for which the election will first be effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the § 444 election.

Applying the relevant law to the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S election for its taxable year that begins on a. Accordingly, we rule that Company's § 1362(a) election will be treated as timely made for its taxable year that begins on a. However, this ruling is contingent on Company filing Form 2553 with an effective date of a, with the appropriate Service Center within 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553. Moreover, Company, if qualified, may make an election under § 444 to have a fiscal year ending b by indicating that intention on Form 2553 and attaching to the Form 2553 a completed Form 8716. For each year that it has a § 444 election in effect, Company must file a return on Form

8752, Required Payment or Refund Under Section 7519, as provided in § 1.7519-2T(a)(2) and make any required payment as provided in § 1.7519-2T.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the foregoing facts. Specifically, we express no opinion on whether Company otherwise qualifies as an S corporation or qualifies to make a § 444 election.

Under a power of attorney on file with this office, a copy of this letter is being sent to Company's authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,
MARY BETH COLLINS
Assistant to the Chief
Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy for section 6110 purposes