Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Number: **200031029**
Release Date: 8/4/2000

Date:
May 2, 2000

Legend

Company =

State =

Husband =

Wife =

Trust =

a =

b =

Dear

This letter responds to a letter dated February 8, 2000, requesting a ruling on behalf of Company under § 1362(b)(5) of the Internal Revenue Code.

The information submitted discloses that Company was incorporated on a in State. Company initially had two shareholders, Husband and Wife. It is represented that Company intended to be an S corporation upon its incorporation. In b, however, Company stock was transferred to the Trust, an apparent ineligible shareholder. Therefore, had Company's S election been timely filed, that transfer may have terminated its election.

Believing itself to be an S corporation, Company has operated accordingly since a. After the end of its taxable year beginning on a, however, Company discovered that its S election had not been timely filed.

Company requests a ruling that its § 1362(a) election will be treated as timely made for its 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.

Applying the relevant law to the facts submitted and representations made, 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, Election by a Small Business Corporation, with an effective date of a, with the appropriate Service Center within 60 days from the date of this ruling. A copy of this letter should be attached to the Form 2553.

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 the Trust qualifies as a valid S corporation shareholder under § 1361 or whether Company otherwise qualifies as an S corporation before or after the transfer of Company stock to the Trust. Moreover, we express no opinion on whether any termination of Company’s S election upon the transfer of Company stock to Trust in b constitutes an inadvertent termination, because Company requested no opinion on this issue.

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,

WILLIAM P. O'SHEA
Chief, Branch 3
Office of the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosure:
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