

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201019019**
Release Date: 5/14/2010
Index Number: 1362.01-03

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-152441-09
Date:
January 28, 2010

LEGEND

Company =

Date =

State =

Dear :

This responds to a letter dated November 25, 2009, submitted on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

Company incorporated in State on Date. Company intended to file Form 2553, Election by a Small Business Corporation, effective Date. Due to inadvertence, Company never filed the election.

LAW AND ANALYSIS

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if a small business corporation makes an election under § 1362(a) for any taxable year, and the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as 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 § 1362(b) for making the election for the taxable year or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective Date, within 60 days following the date of this letter, the election shall be treated as timely made. 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 facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether Company is, in fact, an S corporation for federal tax purposes.

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.

The ruling contained in this letter is 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 a ruling, it is subject to verification on examination.

Pursuant to a power of attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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