

## Internal Revenue Service

Department of the Treasury

Number: **200344011**

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:3 PLR-124696-03

Date:

July 29, 2003

X =

A =

d1 =

State =

Dear :

This letter responds to a letter dated February 7, 2003, 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. A, X's sole shareholder, intended for X to be an S corporation. However, X inadvertently failed to file a Form 2553, Election by a Small Business Corporation. 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 an 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.

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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 an S 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 an S corporation by filing with the appropriate service center a completed Form 2553 within 60 days of this letter, 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.

Except as specifically set forth herein, we express or imply no opinion concerning the federal tax consequences of the transaction described above under other provisions of the Code. Specifically, we express or imply no opinion concerning whether X is an S corporation for federal tax purposes.

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.

Sincerely,

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

Enclosures (2)

A copy of this letter

A copy for §6110 purposes