

## Internal Revenue Service

## Department of the Treasury

Number: **200346014**  
Release Date: 11/14/2003  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3 PLR-135668-03  
Date:  
August 12, 2003

### Legend

X =

Shareholders =

State =

Date 1 =

Dear :

This letter responds to a letter dated May 14, 2003, and subsequent correspondence written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

X incorporated in State on Date 1. X's shareholders intended that X be taxed as an S corporation since Date 1. However, X's Form 2553, Election by a Small Business Corporation, was not timely filed.

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X requests a ruling that its § 1362(a) election will be treated as timely made for its taxable year that began on Date 1.

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

Section 1362(b) provides when an S election will be effective. Generally, if an election to be treated as an S corporation is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation beginning in 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 the corporation will not be treated as an S corporation until the taxable year following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no 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 election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for its taxable year that began on Date 1 and that X is eligible for relief under § 1362(b)(5). Accordingly, we conclude that X's § 1362(a) election will be treated under § 1362(b)(5) as filed timely for its taxable year that began on Date 1. This ruling is contingent, however, on X filing a completed Form 2553, containing an effective date of Date 1 for the election, with the appropriate Service Center within 60 days following the date of this letter. 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 above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue 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 who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely yours,

Mary Beth Collins  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes

cc: