

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number: \_\_\_\_\_

In Re:

Refer Reply To:  
CC:PSI:B01 – PLR-116976-04

Date:  
May 28, 2004

Legend

X =

D1 =

Dear : \_\_\_\_\_ :

This responds to your letter dated, February 7, 2004 in which you requested relief under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated on D1. The shareholders of X intended it to be treated as an S corporation effective on D1. However, the election to be treated as an S corporation was not timely filed.

Law and Analysis

Section 1362(a) allows a small business corporation to elect to be treated as an S corporation.

Section 1362(b) provides the rules as to when such an election will become effective. Section 1362(b)(2) states in relevant part that if an S election 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 for the year in which the election is made. Under §1362(b)(3), however, 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 after the year in which the S election is filed.

Section 1362 (b)(5) provides that (1) if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat such an election as timely made for such taxable year and effective as of the first day of that year.

X did not timely file an election to be treated as an S corporation under § 1362(a). X has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362(b)(5).

### Conclusion

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective D1. Within 60 days from the date of the letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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,

/s/ Dianna K Miosi

Dianna K. Miosi  
Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)