

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B02 – PLR-128109-05

Date:

July 13, 2005

X =  
EIN:

A =  
SSN:

D1 =

Dear :

This letter responds to a letter dated May 15, 2005, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

The information submitted states that A, the president of X, intended for X to elect to be an S corporation effective D1. However, X inadvertently failed to timely file a Form 2553, Election by a Small Business Corporation. Accordingly, X requests a ruling that it will be treated as an S corporation effective D1.

**LAW AND ANALYSIS**

Section 1362(a) provides that a small business corporation may elect to be an S corporation. Section 1362(b) provides the rule on when an S election will be effective.

Section 1362(b)(2) provides 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),

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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 if – (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

## CONCLUSION

Based solely on the facts and representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective D1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for D1.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, include whether X was or is a small business corporation under § 1361(b).

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Beverly Katz  
Senior Technician Reviewer, Branch 2  
Office of Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: