

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-158405-05

Date: January 31, 2006

Legend:

X =

A =

B =

C =

State =

D1 =

Dear :

This letter responds to a letter dated August 19, 2005, and subsequent correspondence, written 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. X's shareholders, A, B, and C, intended for X to be an S corporation effective D1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

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 the 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.

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 § 1362(a) election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to 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 on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make an S corporation election. Thus, 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 effective D1, within 60 days following the date of this letter, the election shall be treated as timely made.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation for federal tax purposes.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X.

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.

Sincerely,

/s/

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

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: