

## Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-141514-05

Date:

March 13, 2006

### Legend:

X =

Y =

Z =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear

This letter is in response to your request, on behalf of X, dated August 2, 2005, for a written determination granting relief under section 1362(b)(5) of the Internal Revenue Code.

### Facts

Based on the materials submitted and representations within, we understand the relevant facts to be as follows. X was incorporated under the laws of State 1 on Date 1. From Date 1 through Date 2, X was a wholly-owned subsidiary of Y, which itself is a wholly-owned subsidiary of Z. X filed an election to be treated as an S corporation effective Date 3. On Date 4 an election to be treated as a qualified subchapter S subsidiary (QSub) was made. On Date 5, all of the stock of X was distributed out to the shareholders (A and B) of Y, to facilitate investment from another shareholder. No valid election to treat X as an S corporation, effective Date 5, was filed. Both A and B have filed their tax returns consistently with there being a valid S election since Date 5, believing that such an election had been filed.

### Law and Analysis

Section 1362(a) of the Code provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) of the Code provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) of the Code provides that 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 the Secretary determined reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as being timely made for that taxable year and effective as of the first day of that taxable year.

Section 1361(b)(3)(D) of the Code provides that if a corporation's status as a qualified subchapter S subsidiary terminates, such a corporation (and any successor corporation, shall not be eligible to make (i) an election under subparagraph (B)(ii) to be treated as a qualified subchapter S subsidiary ("QSub"), or (ii) an election under section

1362(a) to be treated as an S corporation, before its 5<sup>th</sup> taxable year which begins after the 1<sup>st</sup> taxable year for which termination was effective, unless the Secretary consents to such election.

Section 1.1361-5(c)(2) of the Income Tax Regulations states that in the case of S and QSub elections effective after December 31, 1996, if a corporation's QSub election terminates, the corporation may, without requesting the Commissioner's consent, make an S election or have a QSub election made with respect to it before the expiration of the five-year period described in section 1361(b)(3)(D), provided that (i) immediately following the termination, the corporation (or its successor corporation) is otherwise eligible to make an S election or have a QSub election made for it; and (ii) the relevant election is made effective immediately following the termination of the QSub election.

X did not file a timely election to be treated as an S corporation, effective Date 4, under section 1362(a). X has, however, established reasonable cause for not making a timely S election. Therefore, X is entitled to relief under section 1362(b)(5).

#### Conclusion

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective Date 5. An original Form 2553 along with a copy of this letter must be forwarded to the relevant Service Center within sixty (60) days from the date of this letter.

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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the Power of Attorney on file with this office, we will send a copy of this ruling to your representative.

Sincerely,

Dianna K. Miosi  
Branch Chief, Branch 1  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes