

**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:B02

PLR-152340-05

Date:

May 10, 2006

Legend

X:

A:

B:

Date 1:

Dear :

This responds to a letter dated September 26, 2005, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

The information submitted states that X was incorporated on Date 1. A and B, the shareholders of X, intended for X to be an S corporation. However, a Form 2553, Election by a Small Business Corporation, was not timely filed. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 1.

### 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 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 section 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 if: (1) no section 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and section 1362(b)(3) shall not apply.

Section 1378(a) provides that for purposes of subtitle A, the taxable year of an S corporation shall be a permitted year. Section 1378(b) provides that for purposes of § 1378, the term "permitted year" means a taxable year which—(1) is a year ending December 31, or (2) is any other accounting period for which the corporation establishes a business purpose to the satisfaction of the Secretary. For purposes of paragraph (2), any deferral of income to shareholders shall not be treated as a business purpose.

Section 18.1378-1(a) of the Temporary Income Tax Regulations provides that no corporation may make an election to be an S corporation for any taxable year unless the taxable year is a permitted year. In addition, an S corporation shall not change its taxable year to any taxable year other than a permitted year. A permitted year is a taxable year ending on December 31 or is any other taxable year for which the corporation establishes a business purpose (within the meaning of § 1.441-1(b)(1)) to the satisfaction of the Commissioner.

### 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 Date 1. However, this ruling is contingent on X adopting a permitted year for its taxable year, filing S returns based on its permitted year, and reporting income to Shareholders based on that permitted year. Within 60 days from the date of this letter, X must submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

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  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures

Copy of this letter  
Copy for § 6110 purposes

cc: