

**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:3

PLR-139371-06

Date:

December 19, 2006

Company:

Shareholder:

State:

a:

b:

Dear :

This letter responds to your letter dated June 20, 2006, as well as subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that Company's late election under § 1362(a) to be an S corporation will be treated as timely made.

**FACTS**

Company was incorporated under the laws of State on a, and Shareholder intended Company to be an S corporation that date. However, Company inadvertently failed to file Form 2553 (Election by a Small Business Corporation).

**LAW AND ANALYSIS**

Section 1362(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year (A) at

any time during the preceding tax year, or (B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any tax year, and (B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year, then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for that tax year or no such election is made for any tax year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

### CONCLUSION

Based on the facts and representations submitted, we rule that Company's election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning a. As conditions for this ruling—

1) Company must file Form 1120S (U.S. Income Tax Return for an S Corporation) for its tax year ending b, and Shareholder must file an amended Form 1040 for the same year. For all relevant years, Shareholder must include the separately and nonseparately computed items attributable to his shares in his income as provided in § 1366, make adjustments to the stock basis of those shares as provided in § 1367, and take into account any distributions with respect to those shares as provided in § 1368.

2) Company must file Form 2553, to be effective on a, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion as to whether Company otherwise is eligible to be an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

MARY BETH COLLINS  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

enclosures: copy of this letter  
copy for § 6110 purposes