

## 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:B01

PLR-149867-06

Date: March 19, 2007

### LEGEND

X =

A =

D =

State =

Dear :

This responds to a letter dated October 19, 2006, submitted on behalf of X, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

### FACTS

According to the information submitted, X was incorporated on D under the laws of State. A, the president of X, represents that the shareholders of X intended that X elect to be an S corporation effective D. However, X inadvertently failed to timely file a Form 2553, Election by Small Business Corporation. Accordingly, X requests a ruling that it will be an S corporation effective D.

### 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. If the election is made after the first two and one-half months of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that 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 D. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective D, 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 D.

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, including 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Audrey W. Ellis  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes