

## 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-152418-06

Date:  
September 24, 2007

### LEGEND

Company =

Shareholder =

State =

Date 1 =

Dear :

We received your letter dated August 7, 2006, and subsequent correspondence, submitted on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to your request.

### FACTS

Company incorporated under the laws of State on Date 1. Shareholder, Company's sole shareholder, intended for Company to be an S corporation effective Date 1. However, Form 2553, Election by a Small Business Corporation, was not filed timely for Company. Company represents that, since Date 1, Company and Shareholder have treated Company as an S corporation and filed all tax returns consistent with S corporation status.

### LAW AND ANALYSIS

Section 1362(a) provides, that, except as provided in § 1362(g), a small business corporation may elect in accordance with § 1362 to be an S corporation.

Section 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15<sup>th</sup> day of the third month of the taxable year.

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

Section 1362(b)(5) provides that if (A) 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 that taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such an election as timely made for that taxable year (and § 1362(b)(3) shall not apply.)

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553 effective Date 1, 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 Date 1.

Except as expressly provided herein, we express or imply no opinion concerning the 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 Company is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Christine Ellison  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: