

Number: **200828002**  
Release Date: 7/11/2008  
Index Number: 1362.01-03

Refer Reply To:  
CC:PSI:B01  
PLR-100561-08  
Date: April 16, 2008

State =

This responds to the letter dated November 19, 2007, and related correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D under the laws of State. X intended to be an S corporation for federal tax purposes effective D, but the S election was not timely filed.

Section 1362(b) provides the rule on when an S election will be effective. 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 an election as timely made for such taxable year and effective as of the first day of that tax year.

### CONCLUSION

Based solely on the facts submitted and representations made, 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 otherwise qualifies as a subchapter S corporation and files an original Form 2553 along with a copy of this letter with the relevant Service Center within sixty (60) days from the date of this letter, then such an 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.

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 mailed to your authorized representative.

Sincerely,

*Audrey W. Ellis*

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

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes