

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
March 24, 2009

LEGEND

Company =
State =
Date A =
Date B =

Dear :

This responds to a letter dated September 4, 2008, and subsequent correspondence you submitted on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that Company was incorporated in State on Date A. Company's shareholders intended for Company to be an S corporation effective Date B; however, Company failed to timely file a Form 2553, Election by a Small Business Corporation. Accordingly, Company requests a ruling that it will be recognized as an S corporation effective Date B.

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. Generally, 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. Section 1362(b)(3) provides that if an S 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 (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 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 the election, then the Secretary may treat the election as timely made for the taxable year and § 1362(b)(3) shall not apply.

Based solely on the facts and the representations submitted, we conclude that Company has established reasonable cause for failing to make a timely election to be an S corporation effective Date B. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date B within 60 days following the date of this letter, then the election will be treated as timely made for Company's taxable year beginning Date B. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

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 the 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.

Except as specifically set forth above, we express or imply no opinion as to the federal income tax consequences of the transaction described above under the cited provisions or any other provision of the Code. Specifically, we express or imply no opinion concerning whether Company is, in fact, 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.

Sincerely,

Brenda M. Stewart
Senior Counsel, Branch 6
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures(2)
A copy of this letter
A copy for § 6110 purposes

cc: