

## Internal Revenue Service

Department of the Treasury

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Refer Reply To:

CC:PSI:3 PLR-100716-01

Date:

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### LEGEND

X =

A =

D1 =

State =

Year 1 =

This letter responds to your letter dated December 19, 2000, and subsequent correspondence submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### FACTS

According to the information submitted, X was incorporated under State law on D1, with the intention that it be an S corporation. A, the sole shareholder of X, relied on an outside adviser to file X's Form 2553, Election by a Small Business Corporation, with an effective date of D1. The Form 2553, however, was not timely filed.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning D1 under § 1362(b)(5).

For Year 1, A reported the income and losses from X on A's federal income tax return. X and A agree to amend their tax returns consistent with the treatment of X as an S corporation for Year 1.

### 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. 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. 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 for making the election 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 such taxable year.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for not making a timely election and is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of D1 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center. This ruling is conditioned on X filing, within 60 days following the date of this letter, Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1, and A filing, within 60 days following the date of this letter, an amended return for Year 1 consistent with the treatment of X as an S corporation effective for the taxable year beginning D1. A copy of this letter should be attached to each return.

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. Specifically, no opinion is expressed concerning whether X is an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,  
Mary Beth Collins  
Assistant to the Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes