

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

[Third Party Communication:  
Date of Communication: Month DD, YYYY]

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B06  
PLR-151036-08

Date:  
March 17, 2009

### LEGEND:

Company

Shareholder 1

Shareholder 2

Date a  
State

Dear :

This letter responds to your letter dated , submitted on behalf of Company requesting a ruling under §1362(b)(5) of the Internal Revenue Code (the Code).

### FACTS

The information states that Company was incorporated on Date a under the laws of State. Shareholders 1 and 2 intended that Company be treated as an S corporation effective Date a but the election to be treated as an S corporation as of Date a was not timely filed.

### 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, in relevant part, 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. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if: (1) 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 such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Company did not timely file an election to be treated as an S corporation under § 1362(a) as of Date a. Company has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362(b)(5).

## CONCLUSION

Based solely on the facts submitted and representations made, and provided that Company otherwise qualifies as an S corporation, we conclude that Company will be treated as an S corporation effective Date a. Within 60 days from the date of this letter Company should submit a properly completed Form 2553 effective Date a with a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed 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.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Peter C Friedman  
Senior Technician Reviewer, Branch 6  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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