### **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:03 PLR-130539-09

Date: July 27, 2009

# **LEGEND**

Company =

State =

Date1 =

Date2 =

Dear :

This responds to a letter dated June 19, 2009, submitted on behalf of <u>Company</u>, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

#### FACTS

<u>Company</u> incorporated in <u>State</u> on <u>Date1</u>. <u>Company</u> intended to file Form 2553, Election by a Small Business Corporation, effective <u>Date2</u>. Due to inadvertence, <u>Company</u> never filed the election.

## LAW AND ANALYSIS

Section 1362(a) provides, in general, that a small business corporation may elect 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 15th day of the third month of the taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year 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.

### **CONCLUSION**

Based solely on the facts submitted and representations made, we conclude that <u>Company</u> has established reasonable cause for failing to make a timely S corporation election. Thus, we conclude that <u>Company</u> is eligible for relief under § 1362(b)(5). Accordingly, if <u>Company</u> makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective <u>Date2</u>, within 60 days following the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to Form 2553.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether <u>Company</u> is, in fact, 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.

The ruling contained in this letter is 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 a ruling, it is subject to verification on examination.

Sincerely,

/s/

Tara P. Volungis Senior Technician Reviewer, Branch 3 Office of the Associate Chief Counsel (Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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