

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

**CC:PSI:3 – PLR-161429-04**

Date: December 2, 2005

Company:

Shareholders:

State:

a:

b:

c:

Dear :

This letter responds to a letter from your authorized representative dated November 1, 2004, as well as additional correspondence, requesting rulings for Company under § 1362(b)(5) of the Internal Revenue Code (regarding a late S corporation election) and § 301.9100-1(c) of the Procedure and Administration Regulations (regarding a late fiscal year election).

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Company was incorporated under the laws of State on a. Shareholders intended Company to be treated as an S corporation beginning a, with a fiscal tax year ending b; however, Form 2553 (Election by a Small Business Corporation) and Form 8716 (Election To Have a Tax Year Other Than a Required Tax Year) inadvertently were not filed timely with the Internal Revenue Service. Company has filed Form 1120S (U.S. Income Tax Return for an S Corporation) for each of its tax years ending b and c, consistent with Company's intended status as an S corporation. Company also has timely filed Form 8752 (Required Payment or Refund Under § 7519) for each of these tax years.

Section 1362(b)(1) provides, in general, that an election by a small business corporation under § 1362(a) to be an S corporation may be made for any tax year (A) at any time during the preceding tax year, or (B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any tax year, and (B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year, then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for that tax year or no such election is made for any tax year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

Section 444(a) provides that, except as otherwise provided in § 444, a partnership, S corporation, or personal service corporation may elect to have a tax year other than the required tax year.

Section 1.444-3T(b)(1) of the Temporary Income Tax Regulations provides that a § 444 election shall be made by filing a properly prepared Form 8716 with the service center indicated by the instructions to the form. Except as provided in § 1.444-3T(b)(2) and (4), Form 8716 must be filed by the earlier of (i) the 15<sup>th</sup> day of the fifth month following the month that includes the first day of the tax year for which the election will first be effective, or (ii) the due date (without regard to extensions) of the income tax return resulting from the § 444 election.

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Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election (as defined by § 301.9100-1(b)), or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

Based on the facts and representations submitted, we conclude that there was reasonable cause for Company's failure to make a timely S corporation election under § 1362(a), and that Company has satisfied the requirements of § 301.9100-1 and 301.9100-3 regarding a late § 444 election. Consequently--

- Company's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning a. This ruling is contingent on Company filing Form 2553, to be effective on a, with the appropriate service center no later than 60 days from the date of this letter. A copy of this letter should be attached to the Form 2553.
- Company is granted an extension of 60 days from the date of this letter for electing under § 444(a) to have a tax year ending b by indicating that intention on Form 2553 and attaching a completed Form 8716. For each year that a § 444 election is in effect, Company must file a return on Form 8752, as provided by § 1.7519-2T(a)(2), and make any payments required by § 1.7519-2T.

Except for the specific rulings above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion on whether Company otherwise qualifies to be an S corporation or is eligible to make a § 444 election. Section 301.9100-1(a) provides that the granting of an extension of time for making an election is not a determination that the taxpayer is otherwise eligible to make the election.

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

This ruling is directed only to the taxpayer on whose behalf it was requested. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

HEATHER MALOY  
Associate Chief Counsel  
(Passthroughs and Special Industries)

enclosures: copies of this letter (2)  
copy for § 6110 purposes

cc: