Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:PSI:3 – PLR-107381-04

Date: July 28, 2004

LEGEND

X   =

A   =

D1   =

State =

Dear   :

This letter responds to a letter, dated January 17, 2004, and subsequent correspondence from X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

X was incorporated on D1 in State. X's sole shareholder, A, intended to elect for X to be treated as an S corporation effective D1. However, X's Form 2553, Election by a Small Business Corporation was not filed timely. X represents that X and A have filed their federal tax returns consistent with X being an S corporation for every tax year since D1.

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

LAW AND ANALYSIS

Section 1362(a)(1) provides that, except as provided in § 1362(g), 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 3rd month of the taxable year.

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

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making such election for such 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 such election, the Secretary may treat the election as timely made for such taxable year (and § 1362(b)(3) shall not apply).

CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for its failing to make a timely election and that X 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. A copy is enclosed for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether X is an S corporation for Federal tax purposes.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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

Sincerely yours,

/s/

Christine Ellison
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: