

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: N/A

Person To Contact:  
ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-113455-09  
Date:  
March 18, 2009

X =

State =

Date 1 =

Dear :

This responds to a letter dated November 19, 2008, submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1 under the laws of State. It was intended for X to be an S corporation effective Date 1. However, no Form 2553, Election by a Small Business Corporation, for X was timely filed.

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. Section 1362(b)(3) provides that 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(b) for making such election for such taxable year or no such 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.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2533 with the appropriate service center effective Date 1 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 1. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, no opinion is expressed concerning the federal income tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b) of the Code.

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.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for section 6110 purposes