

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date:  
June 18, 2008

### Legend:

X =

A =

B =

D1 =

State =

Dear :

This letter responds to a letter dated February 11, 2008, and subsequent correspondence, written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### Facts

X was incorporated under State law on D1. X's shareholders, A and B, intended for X to be an S corporation effective D1. However, X's Form 2553, Election by a Small Business Corporation, was not timely filed.

X requests a ruling that it will be recognized as an S corporation effective D1.

### Law and Analysis

Section 1362(a)(1) provides 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 at any time during the preceding taxable year, or at any time during the taxable year and on or before the 15<sup>th</sup> day of the third month of the taxable year.

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

Section 1362(b)(5) provides that if 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 the election for the taxable year or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

### Conclusion

Based solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D1. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D1 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the 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 otherwise eligible to be an S corporation for federal tax purposes.

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 ruling request, it is subject to verification on examination.

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.

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.

Sincerely,

/s/

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: