

**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:B03

PLR-166959-03

Date: October 29, 2004

LEGEND

X =

A =

B =

State =

D1 =

D2 =

Dear :

This letter responds to your letter dated November 10, 2003, and subsequent correspondence written on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under State law on D1. X's shareholders, A and B, intended for X to be an S corporation beginning D2.

However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X requests a ruling under § 1362(b)(5), that its § 1362(a) election will be treated as timely made for its taxable year that began on D2.

### 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 such election is effective for the current taxable year if it is made during the preceding taxable year or before the 15th day of the third month of the current taxable year.

Section 1362(b)(3) provides that an election made after the 15th day of the third month of the current taxable year is treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if (1) 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 § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the 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 S corporation 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 effective D2, within 60 days following the date of this letter, the election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. This ruling is contingent upon X and its shareholders filing amended returns consistent with the treatment of X as an S corporation from D2 and thereafter.

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 otherwise eligible to be an S corporation for federal tax purposes. Furthermore, we express or imply no opinion concerning any other outstanding tax issue that may exist between X or its shareholders and the Service.

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

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/

Jeanne Sullivan  
Senior Technician Adviser, Branch 3  
Office of Associate Chief Counsel  
Passthroughs and Special Industries

cc: