

## 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-114908-09

Date: August 10, 2009

### LEGEND

X =

A =

State =

Date =

1

Date =

2

Dear :

This letter responds to a letter dated March 11, 2009, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

### FACTS

X was incorporated under the laws of State on Date 1. A, the sole shareholder of X, intended that X elect to be treated as an S corporation effective Date 1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

X represents that both X and its shareholder have reported their income consistent with X's intended status as an S corporation. X requests a ruling that it will be recognized as an S corporation effective Date 1.

### LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, 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 15<sup>th</sup> day of the third 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) 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 (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 the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) 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 solely on the facts submitted and representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective Date 1. Within 60 days from the date of this letter X should submit a properly completed Form 2553 effective Date 1 to the appropriate service center, to replace the protective election effective Date 2. A copy of this letter should be attached to the Form 2553. A copy is enclosed for that purpose.

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, no opinion is expressed or implied as to whether X is otherwise eligible to be an S corporation for federal tax purposes.

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, we are sending a copy of this letter to your authorized representative.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

Sincerely,

/s/

Leslie H. Finlow  
Senior Technician Reviewer, Branch 3  
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter  
A copy for § 6110 purposes