

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B03 – PLR-133385-03

Date:

February 12, 2004

### LEGEND

X =

State =

d1 =

d2 =

d3 =

A =

B =

C =

Year =

1

Year =

2

Year =

3

Dear \_\_\_\_\_ :

This letter responds to a letter, dated April 15, 2003, and subsequent correspondence on behalf of X from X's authorized representative, 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 shareholder, A, intended for X to be an S corporation, as of d1. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely. B and C became shareholders of X on d2.

### LAW AND ANALYSIS

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 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, then 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 S 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 d3, within 60 days following the date of this letter, then such election will be treated as timely made for Year 1. This letter is contingent on X and its shareholders, filing, within 60 days following the date of this letter, amended federal tax returns consistent with the treatment of X as an S corporation for Year 1, Year 2, and Year 3 prior to the expiration of the applicable period of limitations. This ruling shall be null and void should X, A, B, or C, fail to comply with the requirements of this paragraph.

A copy of this letter should be attached to the Form 2553 filed with the service center, and to each of the amended returns.

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.

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,

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes