

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201014037**  
Release Date: 4/9/2010

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 1362.00-00, 1362.01-03

, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-130017-09  
Date:  
December 11, 2009

### LEGEND

X =

State =

d1 =

d2 =

Dear :

This letter responds to a letter dated April 28, 2009, 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 in d1. X's shareholders intended for X to be an S corporation as of d2. 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 d2.

### LAW AND ANALYSIS

Section 1362(a)(1) 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 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) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) such election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then such election shall be 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 such 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).

X did not file a timely election to be treated as an S corporation under § 1362(a) effective d2. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

### CONCLUSION

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective d2. Within 60 days from the date of this letter, X must submit a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

Except as expressly provided herein, we express or imply no opinion 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 otherwise qualifies as an S corporation for federal tax purposes.

In accordance with the 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,

Faith P. Colson

Faith P. Colson  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes

cc: