

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02 – PLR-110284-05

Date:

August 04, 2005

### Legend

X =  
EIN:

State =

Date 1 =

Year 1 =

Dear :

This responds to a letter dated February 8, 2005, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### Facts

X was incorporated on Date 1 under the laws of State. It was intended that X elect S corporation treatment effective on Date 1, but X's Form 2553, Election by a Small Business Corporation, was not timely filed. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 1.

### 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.

Section 1362(b)(2) provides in relevant part that 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. Under 1362(b)(3), however, if an S election is made after the first two and one-half months of a

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corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) of the Code provides that if (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such 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 such election, the Secretary may treat such an election as timely made for such taxable year.

Based solely on the facts and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for Date 1.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, 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.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

Beverly Katz  
Senior Technician Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: (2)  
Copy of this letter  
Copy for § 6110 purposes