

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200408016**

Release Date: 2/20/04

Index Number: 1362.01-03

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01 – PLR-155330-03

Date:

November 12, 2003

Legend:

X =

Date 1 =

State =

Dear :

This letter responds to your letter, submitted on behalf of X, dated August 31, 2003, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

Facts

X was incorporated under State law on Date 1. The shareholder of X intended that X elect to be treated as an S corporation effective Date 1. However, the election to be treated as an S corporation was not timely filed.

Law and Analysis

Section 1362(a) of the Code provides that a small business corporation can elect to be treated as an S corporation.

Section 1362(b) of the Code provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the

first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) of the Code provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determined reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as being timely made for that taxable year and effective as of the first day of that taxable year.

X did not file a timely election to be treated as a S corporation under section 1362(a). X has, however, established reasonable cause for not making a timely S election. Therefore, X is entitled to relief under section 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 Date 1. An original Form 2553, along with a copy of this letter, must be forwarded to the relevant Service Center within sixty (60) days from the date of this letter.

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.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer representative.

Sincerely,

Dianna K. Miosi  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes