

**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:B01  
PLR-154326-05  
Date:  
November 04, 2005

Legend

X =

D1 =

State =

Dear

This responds to a letter dated October 11, 2005, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on D1 under the laws of State. X intended to be an S corporation for Federal tax purposes effective D1, but the election was not timely filed.

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. 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. If the 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 no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such election as timely made for such taxable year and effective as of the first day of that year.

X did not file a timely election to be treated as an S corporation under § 1362(a) effective D1. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

### CONCLUSION

Based solely upon the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be treated as an S corporation effective D1. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

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, including whether X was or is a small business corporation under § 1361(b).

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

Audrey W. Ellis

Audrey W. Ellis  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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