

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B03-PLR-163053-02

Date:

December 13, 2002

### Legend

X =

A =

d1 =

d2 =

State =

Dear :

This letter responds to a letter dated November 4, 2002 and subsequent correspondence, written on behalf of X by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

### FACTS

The information submitted provides that X was incorporated under State law on d1. A, X's sole shareholder, intended for X to be treated as an S corporation from d1. X's Form SS-4, Application for Employer Identification Number, indicates that it was intended that X would elect to be an S corporation. X retained an attorney to aid with its incorporation and S election. However, the attorney retained by X failed to file a Form 2553, Election by a Small Business Corporation.

X filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for its taxable year beginning d1, on d2.

PLR-163053-02

### LAW AND ANALYSIS

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that such election shall be effective for the current taxable year if it is made during the preceding taxable year or before the 15<sup>th</sup> day of the third month of the current taxable year. Section 1362(b)(3) provides that an election made after the 15<sup>th</sup> day of the third month of the current taxable year shall be treated as having been made for the following taxable year.

Section 1362(b)(5) provides that if 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 such election for such taxable year or no such election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an 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 failing to make a timely S election. Thus, we conclude 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, containing an effective date of d1, within 60 days of the date of this letter, then such election shall be treated as timely made for X's taxable year beginning d1. A copy of this letter should be attached to the Form 2553 filed with the service center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of this case under any other provision of the Internal Revenue Code. Specifically, we express or imply no opinion on whether X is eligible to be an S corporation.

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

PLR-163053-02

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to X.

Sincerely yours,

*/s/*

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