

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-133967-08  
Date:  
October 8, 2008

Legend

Company =

X =

a =

b =

State =

Dear :

We received a letter dated June 17, 2008, and subsequent correspondence, submitted on behalf of Company requesting a ruling under § 1362(b)(5) of the Internal Revenue Code. This letter responds to that request.

Facts

Company was incorporated under State law on a. Company has one shareholder, X. It was intended for Company to be an S corporation effective b. However, Company's Form 2553, Election by a Small Business Corporation, was not timely filed. Thus, Company requests a ruling that it will be recognized as an S corporation effective b.

### 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 – (A) at any time during the preceding taxable year, or (B) 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)(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 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 the election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

### Conclusion

Based on the facts submitted and representations made, we conclude that Company has established reasonable cause for failing to make an S corporation election. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation by filing with the appropriate service center a completed Form 2553 effective b, within 60 days following the date of this letter, the election shall be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

Except as expressly provided herein, we express or imply no opinion concerning the federal 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 Company is otherwise eligible to be an S corporation for federal tax purposes.

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

Sincerely,  
*/s/*

Leslie H. Finlow  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

A copy of this letter

A copy for § 6110 purposes