

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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Date:  
May 14, 2012

**LEGEND**

Company =

Shareholder =

State =

Date 1 =

Dear :

This letter responds to a letter dated March 6, 2012, and subsequent correspondence, written on behalf of Company requesting a ruling under § 1362(b)(5) of the Internal Revenue Code (Code).

**FACTS**

Company incorporated in State on Date 1. Company's Shareholder intended for Company to be an S corporation effective Date 1. However, Company's Form 2553, Election by a Small Business Corporation, was not timely filed.

Company requests a ruling that it will be recognized as an S corporation effective Date 1.

### 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 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if—(A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third month of the following taxable year, then the election is treated as made for the following 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 the election for the taxable year or no 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 such taxable year (and § 1362(b)(3) shall not apply).

### CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Company has established reasonable cause for failing to make an S corporation election in a timely manner. Thus, we conclude that Company is eligible for relief under § 1362(b)(5). Accordingly, if Company makes an election to be an S corporation effective Date 1 by filing a completed Form 2553 with the appropriate service center within 120 days from the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the service center.

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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Mary Beth Carchia  
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