Internal Revenue Service

Department of the Treasury

Number: **200317006**
Release Date: 4/25/2003
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-137146-01
Date:

January 6, 2003

Legend

X   =

A   =

d1   =

d2   =

d3   =

d4   =

d5   =

State =

Dear   :

        This letter responds to your letter dated June 8, 2001, on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

        X was formed under State law on d1 as a Limited Liability Company and on d2 elected to be classified as a corporation for federal income tax purposes.

        From formation X intended to be treated as an S corporation for federal income tax purposes. X retained an accountant to assist with the filing of an election to be treated as an S corporation effective d1. However, the accountant inadvertently filed the Form 2553,

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Election by a Small Business Corporation, on d3 rather than d4. As a result, X's election did not become effective until d5.

X requests a ruling that it will be recognized as an S corporation effective for the taxable year beginning d1.

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation. Section 1362(b)(1) provides that an election may be made by a small business corporation for any taxable year at anytime during the preceding taxable year or at any time during the taxable year on or before the 15th day of the third month of the taxable year. Section 1362(b)(3) provides that an election made after the 15th day of the third month of the taxable year is 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 this subsection 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 make such election, the Secretary may treat such an election as timely made for such taxable year (and § 1362(b)(3) shall not apply).

Based on the facts submitted and representations made, we conclude that X was eligible to make an S election pursuant to § 1362(a) and has established reasonable cause for failing to make such election in a timely manner. Thus, based on the facts submitted and representations made, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, we conclude that X's § 1362(a) Election will be treated as timely made for its taxable year that began on d1. However, this ruling is contingent on X filing with the appropriate service center a completed Form 2553, Election by a Small Business Corporation, within 60 days from the date of this ruling, containing as an effective date d1. A copy of this letter should be attached to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

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.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to the taxpayer.

Except as specifically set forth 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 X is an S corporation for federal tax purposes.

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The rulings contained in this letter are 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 requested ruling, it is subject to verification on examination.

Sincerely,

/s/

Christine Ellison
Chief, Branch 3
Office of the Associate Chief Counsel
Passthroughs and Special Industries

Enclosures (2)
A copy of this letter
A copy for §6110 purposes