

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03 – PLR-160939-03

Date:

June 30, 2004

Legend

Corporation =

Shareholder =

Date 1 =

Date 2 =

State =

Dear :

This letter responds to a letter dated July 22, 2003, and subsequent correspondence, requesting a ruling on behalf of Corporation under § 1362(b)(5) of the Internal Revenue Code.

Facts

Corporation was incorporated in State on Date 1. Corporation has one shareholder, Shareholder. Based on representations made, Shareholder always intended for Corporation to be taxed as an S corporation. However, Corporation failed to file a timely Form 2553, Election by a Small Business Corporation, with the Internal Revenue Service.

Corporation requests a ruling that its § 1362(b) election will be treated as timely made for its taxable year beginning Date 2.

### Applicable Law

Section 1362(a) generally provides that a small business corporation may elect 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 3rd 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) such election is made after the 15th day of the 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then such election shall be treated as 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 the election or no 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 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 Corporation has established reasonable cause for failing to make a timely election pursuant to § 1362(b)(5). Accordingly, Corporation's late election under § 1362(a) is to be treated under § 1362(b)(5) as filed timely for its tax year beginning Date 2. This ruling is contingent on Corporation filing a completed Form 2553, containing an effective date of Date 2 for the election, with the Ogden Service Center within 60 days following the date of this letter. A copy of this letter should be attached to the Form 2553 filed with the Ogden Service Center. A copy is enclosed for that purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Internal Revenue Code. Specifically, we express or imply no opinion concerning whether Corporation is an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested 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, a copy of this letter is being mailed to your authorized representative.

Sincerely,

/s/

Christine E. Ellison  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for § 6110 purposes

cc: