Internal Revenue Service

Number: **200519039**
Release Date: 5/13/2005
Index Number: 1362.01-03

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
            , ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-158124-04
Date:
February 03, 2005

Legend

Corporation   =

Shareholder   =

State   =

Date 1   =

Date 2   =

Dear   :

        This letter responds to your letter dated August 17, 2004, and subsequent correspondence, written on behalf of Corporation, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

<u>Facts</u>

        According to the information submitted, Corporation was incorporated in State on Date 1. Corporation=s sole shareholder, Shareholder, intended that Corporation would elect to be an S corporation effective Date 1. However, there is no record of Corporation filing a timely Form 2553, Election by a Small Business Corporation, effective Date 1.

        Shareholder represents that Corporation and Shareholder filed their federal income tax returns consistent with Corporation being treated as an S corporation for Corporation's taxable year beginning Date 1. Corporation and Shareholder agree to

amend their federal income tax returns to report all tax items consistent with Corporation being treated as an S corporation for Corporation's taxable year beginning Date 2.

Applicable Law

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, if an election to be treated as an S corporation is made within the first two and one-half months of a corporation=s taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the fifteenth day of the third month of a corporation=s taxable year, then the corporation will not be treated as an S corporation until the taxable year following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year 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 S corporation election pursuant to § 1362(b)(5). Accordingly, provided Corporation makes an election to be treated as an S corporation for federal tax purposes by filing a completed Form 2553, containing an effective date of Date 1, with the appropriate service center within 60 days following the date of this letter, then such election will be treated as timely made. Furthermore, this ruling is contingent on Corporation and Shareholder filing, within 60 days following the date of this letter, amended federal income tax returns consistent with the treatment of Corporation as an S corporation for the taxable year beginning Date 2. A copy of this letter should be attached to the Form 2553 and each amended return filed with the service centers.

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 Code. Specifically, we express or imply no opinion concerning whether Corporation otherwise is eligible to be an S corporation for federal tax purposes.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to Corporation=s authorized representative.

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 yours,

James A. Quinn
Senior Counsel, Branch 3
(Passthroughs & Special Industries)

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