

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200921029**
Release Date: 5/22/2009

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1362.00-00, 1362.01-03

, ID No.
Telephone Number:

In Re: Late Acceptance of an S corporation
Election under IRC § 1362

Refer Reply To:
CC:PSI:B06
PLR-152895-08
Date:
February 10, 2009

Legend:

Taxpayer =

State =

Date 1 =

Date 2 =

Dear :

This responds to a letter dated December 4, 2008, submitted on behalf of Taxpayer by Taxpayer's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted and the representations made indicate that Taxpayer registered as a corporation in State on Date 1. Taxpayer intended to elect S corporation treatment effective Date 2, however, Taxpayer failed to timely file a Form 2553, Election by a Small Business Corporation.

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

Section 1362(b) provides the rule on when an S election will be effective. Generally, if an S election 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 first two and one-half months of a corporation's taxable year, then the

corporation will not be treated as an S corporation until the taxable year after the year in which the S election is made.

Section 1362(b)(5) provides that if (1) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (2) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

Based solely on the information submitted and the representations made, we conclude that Taxpayer has established reasonable cause for failing to make a timely election to be an S corporation effective Date 2. Accordingly, provided that Taxpayer makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center within 60 days following the date of this letter, then the election will be treated as timely made for Taxpayer's taxable year beginning Date 2. A copy of this letter should be attached to the Form 2553.

Except as specifically set forth above, we express or imply no opinion concerning the federal income tax consequences of the transaction described above under the cited provisions or any other provision of the Code. Specifically, we express or imply no opinion concerning whether Taxpayer is, in fact, an S corporation for federal tax purposes.

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 request for rulings, it is subject to verification on examination.

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

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Peter C. Friedman
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy
Copy for § 6110 purposes

cc: