

**Internal Revenue Service**

Number: **200633024**

Release Date: 8/18/2006

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-158718-05

Date:

May 17, 2006

**LEGEND:**

Corporation =

Date 1 =

S1 =

S2 =

A =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This responds to a letter dated October 10, 1997, from your authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The represented facts are as follows. Corporation was incorporated on Date 1. S1 and S2 are the shareholders of Corporation. Corporation engaged the services of an accountant, A, to assist in filing Corporation's Form 2553, Election by a Small Business Corporation. A prepared Form 2553 on Date 2. After it was signed by Corporation's shareholders, A mailed the Form 2553 to the Service on Date 3. However, Corporation received a notice that the Service has no record of Corporation filing a timely Form 2553 for Year 1.

While Corporation was incorporated and had shareholders during Year 1, Corporation did not commence business activity until Year 2. Corporation did not file a tax return for its taxable year beginning Date 1. Corporation filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for its Year 2 taxable year, and subsequent

taxable years. It is further represented that Corporation's shareholders have continued to file returns consistent with Corporation being an S Corporation for all applicable taxable years.

Section 1362(a)(1) 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 S election is made within the first two and one-half months of the corporation's taxable year, then that 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 that corporation will not be treated as an S Corporation until the taxable year following the year in which the S election is made.

Section 1362(b)(5) of the Code provides that if an election under §1362(a) is made for any taxable year after the date prescribed by §1362(b) 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 timely 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 solely on the facts and the representations submitted, we conclude that Corporation has established reasonable cause for failing to make a timely S corporation election for Corporation's taxable year beginning Date 1. Accordingly, provided that Corporation makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center, with an effective date of Date 1, within 60 days following the date of this letter, then such election will be treated as timely made for Corporation's taxable year beginning Date 1. A copy of this letter should be attached to the Form 2553. In addition, Corporation must file a Form 1120S for its Year 1 taxable year with the appropriate service center no later than 60 days from the date of this letter.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether Corporation was or is a small business corporation under §1361(b).

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

Sincerely,

/s/

James A. Quinn  
Senior Counsel, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)