

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:Br.1- 120919-98

Date:

December 18, 1998

Legend:

X =

D1 =

This responds to your letter dated November 11, 1998, submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated on D1. X intended to be treated as an S corporation for federal income tax purposes effective on D1, but the S election was not timely filed.

**LAW AND ANALYSIS**

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. 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. If the 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 no election is made pursuant to § 1362(a), or, if made, the election is made after the date prescribed for making such an election, and the

Secretary determines there was reasonable cause for the failure to timely make the election, then the Secretary may treat such an election as timely made for such taxable year and effective as of the first day of that tax year.

X did not file a timely election to be treated as an S corporation under § 1362(a) effective on D1. X has, however, established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

### **CONCLUSION**

Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation, we conclude that X will be recognized as an S corporation effective D1. Within 60 days from the date of this letter, X should submit a properly completed Form 2553, with a copy of this letter attached, to the relevant service center.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

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.

In accordance with the Power of Attorney on file with this office, the original of this letter is being sent to the taxpayer and a copy is being sent to the taxpayer's authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Signed/David R. Haglund  
David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)