

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

May 4, 1999

Legend

X =

A =

Date1 =

Date2 =

State =

Dear

This letter responds to a letter dated November 16, 1998, submitted by your authorized representative on behalf of X, requesting a ruling that X's S corporation election be effective as of X's taxable year beginning Date1.

The facts submitted indicate that X was incorporated in State on Date2. Prior to Date2, A operated X's business as a sole proprietorship. At the time of incorporation, A intended for X to be an S corporation. However, the election was not timely filed with the Internal Revenue Service.

X requests a ruling that it be recognized as an S corporation effective as of its taxable year beginning Date1 under section 1362(b)(5) of the Internal Revenue Code.

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

Section 1362(b) governs the effective date of an S election. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation beginning the year in which the election is made. If an S election is made after the first two and one-half months of the 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) provides that if an election under section 1362(a) is made for any taxable year after the date prescribed by section 1362 for making the election, or no section 1362(a) election is made for any taxable year, and 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.

X has established reasonable cause for failing to file a timely election and is entitled to relief under section 1362(b)(5). Based solely on the facts and representations submitted, and assuming that X otherwise qualifies as an S corporation, the Service will recognize X's election to be an S corporation effective Date1 provided that no later than 60 days from the date of this ruling, 1) X properly executes and files Form 2553 with an effective date of Date1 with the appropriate service center, and 2) all tax returns for X and its shareholders are amended and filed consistent with X being recognized as an S corporation. X should attach a copy of this letter to the Form 2553 filed with the service center. A copy is enclosed for that purpose.

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.

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.

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

Sincerely yours,

William P. O'Shea  
Chief, Branch 3  
Office of Assistant  
Chief Counsel  
(Passthroughs & Special  
Industries)

Enclosures(2):

Copy of this letter

Copy of this letter for section 6110 purposes