

**Internal Revenue Service**

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

Number: **199914021**

Person to Contact:

Release Date: 4/9/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&amp;SI:Br.1-PLR-117364-98

Date:

January 5, 1999

**LEGEND**X =

Date 1 =

This responds to a letter dated November 19, 1998, and prior correspondence submitted on behalf of X and requesting relief under § 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated on Date 1. The shareholders desired S corporation treatment for X effective on Date 1, but an election to be treated as an S corporation 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. Section 1362(b)(2) provides in relevant part that 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. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a

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corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if: (1) 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 such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

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

### **CONCLUSION**

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective Date 1. Please submit an original Form 2553 along with a copy of this letter to the relevant service center within 60 days of receipt of this letter.

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.

This ruling is directed only to the taxpayer on whose behalf it was requested. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file with this office, this letter is directed to the X's authorized representative. A copy will be sent to the taxpayer.

Sincerely,

Signed/Daniel J. Coburn  
DANIEL J. COBURN  
Assistant to the Branch Chief, Branch 1  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

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