

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:1 - PLR-140670-01

Date:

November 16, 2001

Legend:

X =

State =

D1 =

This responds to your representative's letter dated July 26, 2001, submitted on behalf of X, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

FACTS

X began doing business under State law on D1. X's shareholder intended that X be a subchapter S corporation, effective D1; however, an S corporation election to be treated as an S corporation was not timely filed.

LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation can elect to be treated as 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 that corporation will be treated as an S corporation for the year in which the election was made. 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 after the year in which the S election is made.

Section 1362(b)(5) provides that if: (1) an election under section 1362(a) is made for any taxable year after the date prescribed for making such election for such taxable year, and (2) the Secretary determines that there was reasonable cause for the failure

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to timely make the election, then the Secretary can treat the election as timely made for such taxable year.

X's S corporation election was not filed timely for the election to be effective as of D1. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under section 1362(b)(5).

### CONCLUSION

Based solely on the facts submitted and representations made, and assuming that X otherwise qualifies as a subchapter S corporation as of D1, we conclude that X will be recognized as an S corporation effective as of D1. X should file a completed Form 2553 (with a copy of this ruling attached) reflecting its election of subchapter S corporation status as of D1 with the applicable Service Center within 60 days of 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. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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

Enclosures (2):

Copy of this letter  
Copy for section 6110 purposes