

## Internal Revenue Service

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

Number: **199925021**

Person to Contact:

Release Date: 6/25/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:1-PLR-105851-99

Date:

March 23, 1999

### Legend

X =

Date 1 =

This responds to a letter dated March 12, 1999, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

### Facts

X was incorporated on Date 1. The shareholders of X desired that X elect S corporation treatment for X, effective on Date 1, but the election to be treated as an S corporation was not timely filed. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date 1.

### 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 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.

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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 file an election to be treated as an S corporation 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. An original Form 2553 along with a copy of this letter must be forwarded to the relevant Service Center within the earlier of 60 days from the date of this letter or the expiration of the statute of limitations for any affected income tax returns. X and the shareholders of X must file all amended returns required as a result of the treatment of X as an S corporation effective Date 1, prior to the expiration of the applicable statute of limitations period. This ruling shall be null and void should X or any of the shareholders of X fail to comply with the requirements of this paragraph.

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(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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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,

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes