

## Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199910028**  
Release Date: 3/12/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:Br.1-120307-98

Date:

December 10, 1998

### Legend:

X =

D1 =

This responds to your letter dated November 20, 1998, and prior correspondence, written on behalf of X, requesting relief under §1362(b)(5) of the Internal Revenue Code.

### **FACTS**

X was incorporated on D1. X's shareholder intended for X to be an S corporation effective D1; however, the S corporation 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

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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.

### CONCLUSION

X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5). Based solely on the facts submitted and representations made, and provided that X otherwise qualifies as a subchapter S corporation as of D1, and X and X's sole shareholder make any adjustments to the corporation's and shareholder's federal income tax returns necessary to comply with this ruling, we conclude that X will be recognized as an S corporation effective for the tax year beginning on D1. Please file a completed Form 2553 (with a copy of this ruling attached) reflecting X's S election as of D1, with the applicable service center within 60 days of this letter.

Except as specifically set forth above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Internal Revenue 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.

Pursuant to the power of attorney on file with this office, the original of this letter is being sent to the taxpayer's representative and 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 & Special Industries)

Enclosures: 2

Copy of this letter

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