

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

**Telephone Number:**

Refer Reply To:

CC:DOM:P&SI:1-PLR-110597-00

Date:

October 17, 2000

Legend

X =

A =

B =

Date1 =

This responds to a ruling request dated April 28, 2000, submitted on behalf of X, which requests relief under §1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated on Date1. At that time, A and B were the shareholders of X and intended that X be treated as an S corporation effective Date1, but an S election was not timely filed. X, A, and B have consistently reported all income and loss of X as though X were an S corporation since Date1, but did not file all returns timely.

**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.

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

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failure to make such election timely, 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 a timely election to be treated as an S corporation under § 1362(a) effective on Date1. 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 Date1 if X submits a Form 2553 properly executed by A, and B with a copy of this letter to the relevant service center within 60 days from the date 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. Specifically, we express no opinion as to whether X is otherwise qualified to be an S corporation.

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

Sincerely yours,  
DIANNA K. MIOSI  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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