

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

DECEMBER 15, 1998

Re:

EIN:

Shareholders:

SSN:

SSN:

Legend:

X:

Date 1:

Year 1:

:

This letter responds to your letter submitted on behalf of X in which relief is requested under § 1362(b)(5) of the Internal Revenue Code.

The facts are represented to be as follows. X was incorporated on Date 1. The shareholders of X intended that X would be treated as an S corporation beginning with Year 1. The shareholders of X believed that X's accountant had filed a timely election to be treated as an S corporation for income tax purposes. According to the attorney for X, the accountant had represented that the forms necessary for the corporation to be granted S corporation status had been completed and filed. The election, however, was never prepared for Year 1. X filed returns for all years as an S corporation.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides that 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 is 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 effective.

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 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.

In this case, 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 and the representations submitted, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation for its first taxable year, Year 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, with the appropriate service center effective for its Year 1 taxable year, within 60 days following the date of this letter, then such election will be treated as timely made for X's Year 1 taxable year. A copy of this letter should be attached to the Form 2553.

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, including whether X was or is a small business corporation under § 1361(b) of the Code.

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.

Sincerely,

Joseph H. Makurath  
Joseph H. Makurath  
Senior Technician Reviewer,  
Branch 7  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: Copy for § 6110 purposes