

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-142046-02

Date:

August 22, 2002

Legend:

X =

State =

D1 =

Dear :

This responds to a letter dated July 23, 2002, submitted on behalf of X, requesting relief under section 1362(b)(5) of the Internal Revenue Code.

**FACTS**

X was incorporated on D1 under the laws of State. The shareholders of X desired that X elect S corporation treatment effective on D1, 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 D1.

**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. 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 section 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 section 1362(b)(3) shall not apply.

## CONCLUSION

Based on the facts submitted and representations made, we conclude that X has established reasonable cause for its failing to make a timely election and that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing with the appropriate Service Center a completed Form 2553, containing an effective date of D1 for the election, within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center. A copy is enclosed for that purpose.

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 requesting 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 representative.

Sincerely,

/s/

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

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes  
cc: