

**Internal Revenue Service**

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

Number: **199903016**  
Release Date: 1/22/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:Br.7-PLR-114760-98

Date:

OCT. 23 1998

Re: Request for Ruling under § 1362(b)(5) of the Internal Revenue Code

Legend

X:

D1:

Dear \_\_\_\_\_ :

We received a letter dated \_\_\_\_\_, \_\_\_\_\_, written on behalf of X, requesting a ruling that X's S corporation status will be effective as of D1. This letter is in reply to that request.

FACTS

X incorporated on D1. X's shareholder intended that X be a subchapter S corporation from its inception; however, the S corporation election under § 1362(b)(1) was not filed timely. X requests a ruling that it will be recognized as a subchapter S corporation effective D1 pursuant to § 1362(b)(5) of the Internal Revenue Code.

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 that corporation will be treated as an S corporation for the year in which the

CC:DOM:P&SI:Br.7-PLR-114760-98

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 made.

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 effective as of the first day of its tax year.

X's S corporation election was not filed timely for the election to be effective as of its tax year beginning on D1. Nevertheless, X has established reasonable cause for not making a timely election and is entitled to relief under § 1362(b)(5).

### CONCLUSIONS

Based solely on the facts submitted and representations made and assuming that X otherwise qualifies as a subchapter S corporation as of D1 and X's shareholder makes any adjustments to his personal federal income tax returns necessary to comply with this ruling, we conclude that X will be recognized as an S corporation effective D1. X should file a completed Form 2553 reflecting its election of subchapter S corporation status as of D1 with the applicable Service Center within 60 days after issuance of this letter. X should attach a copy of this ruling with the Form 2553 filed with the applicable Service Center.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed or implied concerning whether X otherwise satisfies the S corporation eligibility requirements.

Temporary or final regulations pertaining to one or more of the issues addressed in this ruling have not yet been adopted. Therefore, this ruling will be modified or revoked if the adopted temporary or final regulations are inconsistent with any conclusion in the ruling. See section 12.04 of Rev. Proc. 98-1, 1998-1 I.R.B. 7, 47. However, when the criteria in section 12.05 of Rev. Proc. 98-1 are satisfied, a ruling is not revoked or modified retroactively except in rare or unusual circumstances.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

CC:DOM:P&SI:Br.7-PLR-114760-98

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely yours,

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

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