



## Tax Reduction Letter

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### Private Letter Ruling 9719009

This responds to your letter dated September 30, 1996, written on behalf of X, requesting a ruling that X's S corporation status will be effective as of the taxable year beginning in D2.

#### FACTS

According to the information submitted, X was incorporated on D1 and it was decided that X would be an S corporation as of the taxable year beginning in D2. However, X did not file a timely S corporation election. A is X's sole shareholder. A represents that A delivered the S corporation election to an employee of X who was supposed to mail it. However, the employee represents that the employee did not mail in the S corporation election. For the taxable year beginning in D2, X filed a Federal tax return as if X were a valid S corporation, and filed A's Federal tax return as if X were an S corporation. In D3, X was notified that it had never filed a valid S corporation election with the Internal Revenue Service. X immediately mailed an S corporation election to the Internal Revenue Service, and requested a private letter ruling.

X requests a ruling that it will be recognized as an S corporation effective [\*2] for the taxable year beginning in D2 under §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 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 §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).

#### CONCLUSIONS

Based solely on the facts submitted and representations [\*3] set forth above, and assuming that X otherwise qualifies as an S corporation, we conclude that X will be recognized as an S corporation effective for the taxable year beginning in D2.

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. 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 who requested it. *Section 6110(j)(3) of the Code* provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this letter will be sent to X.

Sincerely yours, Dianna K. Miosi Acting Branch Chief, Branch 1 Office of the Assistant Chief Counsel (Passthroughs and Special Industries).