

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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LEGEND

Company =

D1 =

X =

Dear :

This letter responds to a letter dated December 9, 1998, submitted by your authorized representative on behalf of Company, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code that Company's S corporation election will be effective as of the taxable year beginning D1.

FACTS

According to the information submitted, Company was incorporated on D1. Its sole shareholder, X, had intended for Company to be an S Corporation from inception, but Company's Form 2553, Election by a Small Business Corporation, was not timely filed.

LAW

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

Section 1362(b) explains 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 beginning 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 the 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 (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362 for making the election, and (B)

