

Internal Revenue Service

Department of the Treasury

Number: **200228006**
Release Date: 7/12/2002
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02 - PLR-169103-01
Date:
April 2, 2002

X =

A =

B =

D1 =

Year 1 =

D2 =

Dear :

This responds to a letter dated October 30, 2001, and subsequent correspondence, written on behalf of X, by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 of Year 1. A and B, X's shareholders, represent that they intended for X to be treated as an S corporation for federal tax purposes as of Year 1. On or about D2, A and B signed and delivered a Form 2553, Election by a Small Business Corporation, to X's tax advisor. X's tax advisor maintains that he filed the Form 2553 with the Internal Revenue Service. However, there is no evidence that a Form 2553 was filed for X for Year 1.

A and B represent that X, A, and B filed their federal income tax returns consistent with X being treated as an S corporation for all applicable taxable years beginning with Year 1.

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(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable year.

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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 X's first taxable year. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 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).

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

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,
Matthew Lay
Senior Technician Reviewer
Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes