

**Internal Revenue Service**

Department of the Treasury

Number: **200329024**  
Release Date: 7/18/2003  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-166266-02

Date:

April 9, 2003

X =

A =

D1 =

D2 =

Year 1 =

Dear :

This letter responds to a letter, dated November 25, 2002, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 in Year 1. A, as the vice president of X, represents that X was intended to be an S corporation beginning Year 1, its first taxable year. A copy of X's articles of incorporation evidences this intent. However, no Form 2553, Election by a Small Business Corporation, was filed with the Internal Revenue Service. For Year 1 X filed a Form 1120S, U.S. Income Tax Return for an S Corporation. A originally filed a Form 1040, U.S. Individual Income Tax Return, for Year 1 consistent with X being an S corporation. However, A subsequently file an amended return for Year 1 inconsistent with X being an S corporation. A represents that A will amend A's tax return for Year 1 to be consistent with X being an S corporation in Year 1.

Section 1362(b)(5) of the Code 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.

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 Year 1 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. This ruling is conditioned on A filing by D2 an amended Form 1040 for Year 1 to report consistent with X being an S corporation in Year 1. A copy of this letter should be attached to the amended return.

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) of the Code.

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 X's authorized representative.

Sincerely yours,

J. THOMAS HINES  
Chief, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes