

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

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Date:

January 5, 2004

Legend

X =

A =

B =

C =

D =

d1 =

Dear

This letter responds to a letter dated August 27, 2003, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

According to the information submitted, X's first taxable year began on d1. A, X's president, represents that X's shareholders, A, B, C, and D intended for X to be an S corporation, as of d1. X's corporate minutes indicate that it was intended that X be an S

corporation. However, X's Form 2553, Election by a Small Business Corporation, was not filed timely.

A represents that X and all shareholders have filed their federal income tax returns for the taxable year beginning d1 and subsequent taxable year consistent with the treatment of X as an S corporation.

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.

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 effective d1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective d1, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for d1.

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 forwarded to X's authorized representative.

Sincerely yours,

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes