

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:  
(202)622-3060  
Refer Reply To:  
CC:PSI:2-PLR-143867-01  
Date:  
December 14, 2001

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to a letter dated August 14, 2001, submitted 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 Date 1 of Year 1. A is the president and a shareholder of X. A represents, and minutes of the first shareholder meeting indicate, that the shareholders always intended for X to be an S corporation. A represents that a Form 2553, Election by a Small Business Corporation, effective for Date 1 of Year 1 was prepared and timely mailed. However, the Service has no record of the filing of a Form 2553 by X. X, believing that Form 2553 had been filed, prepared and filed a Form 1120S, U.S. Income Tax Return for an S corporation. The Service subsequently informed X that it could not process X's Form 1120S because the service center's records indicated that no Form 2553 had been received.

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 first taxable year. Accordingly, provided that X makes an election to

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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) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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,  
J. Thomas Hines  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

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