

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:2-PLR-158496-01  
Date:  
February 15, 2002

Legend

X =

A =

D1 =

Year 1 =

Dear :

This responds to a letter dated October 9, 2001, submitted by X's authorized representative on behalf of X, 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, the president of X, represents that the shareholders of X intended for X to be an S corporation. An affidavit of X's former attorney who was responsible for incorporating X indicates this intent. Moreover, a Form 1120S, U.S. Income Tax Return for an S Corporation, was filed for the Year 1 taxable year further indicating the shareholders' intention that X be an S corporation. However, X's attorney inadvertently failed to file Form 2553, Election to be a Small Business Corporation, for 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 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

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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 ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions of the Code, including whether X was or is a small business corporation under § 1361(b).

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

Pursuant to 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  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2  
Copy of this letter  
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