

**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-161780-01  
Date:  
March 7, 2002

Legend

X =

A =

B =

D1 =

Year 1 =

Dear :

This responds to your letter dated October 31, 2001, submitted by the shareholders 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 and B, the shareholders of X, represent that they always intended for X to be an S corporation. The Unanimous Written Consent of the Board of Directors In Lieu of an Organizational Meeting and the filing of Form SS-4, Application for Employer Identification Number, indicate such intention. In addition, a Form 1120S, U.S. Income Tax Return for an S Corporation, was filed with the IRS for the Year 1 taxable year indicating A and B's intention that X be an S corporation. The IRS subsequently informed X that no timely completed Form 2553, Election by a Small Business Corporation, was filed on behalf of X 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.

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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 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,  
J. Thomas Hines  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2

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