

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B02 - PLR-103874-02

Date:

March 20, 2002

X =

A =

B =

C =

D1 =

Year 1 =

E =

F =

Year 2 =

Dear :

This responds to a letter dated December 31, 2001, and subsequent correspondence, written 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's first taxable year began on D1 of Year 1. A, B, and C, X's shareholders, represent that they intended for X to be treated as an S corporation for federal tax purposes as of Year 1. A, who is also X's president, instructed X's attorney, E, to prepare and file a Form 2553, Election by a Small Business Corporation, for X for Year 1. However, a Form 2553 was not filed for X for Year 1.

X filed a Form 1120-A, U.S. Corporation Short-Form Income Tax Return, for its Year 1 taxable year. X and its shareholders were unaware that relief for X's late S corporation election may be available until discussing the issue with E, X's new certified public

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accountant, in Year 2. X and its shareholders agree to make any adjustments that may be required to treat X as an S corporation from its taxable year beginning on D1 or Year 1.

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 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. This ruling is conditioned on X, A, B, and C, filing, within 60 days following the date of this letter, amended returns to report consistent with X being an S corporation and A, B, and C, paying any tax due (with interest) for all taxable years from X's Year 1 taxable year. A copy of this letter should be attached to each of the amended returns.

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 sent to X's authorized representative.

Sincerely yours,
Matthew Lay
Senior Technician Reviewer
Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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