

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-142031-02
Date:
October 2, 2002

Legend

X =

A =

D1 =

Dear :

This letter responds to a letter dated July 9, 2002, and subsequent correspondence, submitted 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. A, the president of X, represents that X was intended to be an S corporation effective D1, as evidenced by an affidavit from X's original attorney, indicating that the shareholders of X expressed intent on or about D1 that X be an S corporation. However, due to miscommunication between X and X's attorney, no Form 2553, Election by a Small Business Corporation, was timely filed for X.

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, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective D1. 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 D1 within 60 days following the date of this letter, then such election will be treated as timely made for X effective D1. 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 forwarded to X's authorized representative.

Sincerely yours,

CAROLYN HINCHMAN GRAY
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2

Copy of this letter
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