

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-164994-02

Date:

April 2, 2003

X =

A =

B =

D1 =

Year 1 =

Dear :

This letter responds to a letter November 18, 2002, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that A and B incorporated X on D1 and intended that X be an S corporation effective for X's first taxable year, Year 1. However, no Form 2553, Election by a Small Business Corporation, was timely filed for X. A and B indicated on Form SS-4, Application for Employer Identification Number, that they believed X was an S corporation and filed a Form 1120S, U.S. Income Tax Return for an S corporation, for X's Year 1 taxable year.

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 effective for X's first taxable year. Accordingly, provided that X makes an

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election to be an S corporation by filing a completed Form 2553 effective for its Year 1 taxable year, along with a copy of this letter, with the appropriate service center within 60 days from the date of this letter, then such election will be treated as timely made for X's Year 1 taxable year.

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.

Sincerely yours,

J.THOMAS HINES
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: