

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

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Date:

April 21, 2004

Legend

X =

A =

d1 =

d2 =

Dear

This letter responds your letter dated December 11, 2003 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, X's president, represents that A intended that X elect to be an S corporation effective d2. X filed Form 1120S, U.S. Income Tax Return for an S corporation, for its taxable year beginning d2, and all subsequent years. However, X's accountant failed to timely file a Form 2553, Election by a Small Business Corporation, for X.

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 effective d2. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective d2, 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 d2.

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) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Audrey W. Ellis  
Reviewer, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
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