

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-126312-04

Date:

June 22, 2004

Legend

X =

A =

d1 =

Dear

This letter responds to your letter dated May 3, 2004, submitted on behalf of X, as X's authorized representative, 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 X's shareholders intended that X elect to be an S corporation effective d1. A Statement of Account from the company X hired to incorporate X indicates this intent. Additionally, X filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for its first taxable year beginning on d1. However, no Form 2553, Election by a Small Business Corporation, was timely filed 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 d1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective d1, 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 d1.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to the taxpayer and X's second authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes