

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-126632-05

Date:

September 22, 2005

Legend

X =

A =

d1 =

Dear

This letter responds to your letter dated April 19, 2005, 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 vice president of X, represents that X intended to elect S corporation treatment effective on d1. Further, A represents that a Form 2553, Election by a Small Business Corporation, effective for d1 was prepared and mailed. However, the Service has no record of X filing a Form 2553 by X.

Section 1362(a) provides that a small business corporation may elect to be an S corporation. Section 1362(b) provides the rule on when an S election will be effective.

Section 1362(b)(2) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under 1362(b)(3), however, if an S election is made after the first two and one-half months of a

corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

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 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.

Sincerely yours,

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

Enclosures (2)
Copy of this letter
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