

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-119025-00

Date:

January, 31, 2001

X =

A =

B =

D1 =

D2 =

Year 1 =

Dear :

This letter responds to your September 29, 2000, 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 it was intended for X to be an S corporation effective as of D2 of Year 1, its first taxable year. A and B are the shareholders of X. They were not aware of the necessity to prepare and file a Form 2553, Election by a Small Business Corporation. Therefore, A and B failed to file the Form 2553 timely for X for Year 1. When filing its tax returns for Year 1, and subsequent years, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and X's shareholders filed Form 1040, U.S. Individual Income Tax Return, consistent with X being an S corporation.

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

Sincerely yours,  
JEANNE M. SULLIVAN  
Assistant to the Chief  
Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures: 2  
Copy of this letter  
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