

**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-123980-05

Date:

August 18, 2005

Legend

X =

A =

D1 =

D2 =

Dear

This responds to a letter dated December 30, 2004, 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 X was incorporated on D1. A, the president of X, represents that the shareholders of X intended for X to be an S corporation effective D2. However, no timely Form 2553, Election to be a Small Business Corporation, was filed.

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 with the appropriate service center effective D2 within 60 days following the date of this letter, then such election will be treated as timely made for D2. 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).

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's authorized representative.

Sincerely yours,

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110