

Internal Revenue Service

Department of the Treasury

Number: **2003410007**
Release Date: 10/10/2003
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2-163009-01

Date:

March 26, 2002

X =

A =

B =

C =

Date 1 =

Date 2 =

Year 1 =

Dear :

This responds to a letter dated October 20, 2001, together with subsequent correspondence, requesting a ruling under §1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated in Year 1. According to the facts submitted, A, B, and C are the only persons that have held X stock since Date 1. The shareholders of X intended for X to be an S corporation effective Date 1. This intent is evidenced by notes from a meeting attended by A, B, and C on Date 2. However, a timely Form 2553, Election by a Small Business Corporation, was not 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 Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 effective Date 1 and signed by A, B, and C

with the appropriate service center effective within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553. X and the shareholders of X must file all amended returns required as a result of the treatment of X as an S corporation effective Date 1 prior to the expiration of the applicable period of limitations. This ruling shall be null and void should X, A, B, or C fail to comply with the requirements of this paragraph.

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.

Sincerely yours,

Matthew Lay
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes