

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-115553-00

Date:

November 14, 2000

X =

A =

B =

D1 =

D2 =

Year 1 =

State =

Dear :

This letter responds to a letter dated June 22, 2000, and subsequent correspondence, submitted by the authorized representative of X 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 of Year 1. A, the chief executive officer of X, and B, the secretary and chief financial officer of X, represent that X was intended to be an S corporation effective for the Year 1 taxable year. This intent is evidenced by X's State Form 3560, S Corporation Election or Termination/Revocation, which indicates that X was making a federal S corporation election, and by a letter from X's attorney dated D2 of Year 1, which refers to X being treated as an S corporation. A and B further represent that X relied on X's attorney to file a Form 2553, Election by a Small Business Corporation, for X. However, X's Internal Revenue service center has no record of X's filing Form 2553. No Form 2553 was filed for X for the Year 1 taxable year.

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 Year 1 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 forwarded to X's authorized representative.

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  
Copy for § 6110 purposes