

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200439008**

Release Date: 9/24/04

Index Number: 1362.01-03

Person To Contact:

, ID No. 50-09147

Telephone Number:

Refer Reply To:

CC:PSI:B02 – PLR-104408-04

Date:

May 27, 2004

Legend

X:

A:

d1:

d2:

Dear :

This responds to your representative's letter dated November 13, 2003, 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 sole shareholder of X, intended for X to be an S corporation effective for the taxable year beginning d2, but X's Internal Revenue service center has no record of a Form 2553, Election by a Small Business Corporation, being timely filed for X. This intent is evidenced by X's having received a letter from State confirming X's election to be taxed as an S corporation for purposes of State law. Accordingly, X requests a ruling that it will be treated as an S corporation effective d2.

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 X's taxable year beginning 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) 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,

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

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: