

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02 – PLR-135324-04

Date:
September 14, 2004

X =

A =

Date 1 =

Date 2 =

Dear _____ :

This letter responds to your letter, dated June 23, 2004, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated on Date 1. A, the secretary of X, represents that X was intended to be an S corporation beginning on Date 2. However, no Form 2553, Election by a Small Business Corporation, was filed timely with the Internal Revenue Service.

LAW

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.

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CONCLUSION

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 2. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 2, within 60 days following the date of this letter, then such election will be treated as timely made effective Date 2. 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 requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X.

Sincerely,

Beverly Katz
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (2)
Copy of this letter
Copy for § 6110 purposes