

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:P&SI:2 - PLR-117331-00

Date:

November 30, 2000

X =

A =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated August 25, 2000 and subsequent correspondence, submitted on behalf of X by X's authorized representative, 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 is the sole shareholder of X. A, the president of X, represents that it was intended for X to be an S corporation beginning in Year 1, its first taxable year. A also represents that a Form 2553, Election by a Small Business Corporation, was prepared and filed for X. However, the Service received the Form 2553 late and did not accept the Form 2553 as timely filed for Year 1. X's service center accepted the Form 2553 effective for X's Year 2 taxable year. For Year 1, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and A filed Form 1040, U.S. Individual Income Tax Return, consistent with X being an S corporation.

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 first taxable year. Accordingly, the election made by X to be an S corporation by the filing of the Form 2553, which indicated that the election was to be effective for X's Year 1 taxable year, will be treated as timely made for X's Year 1 taxable year. X should send a copy of this letter to the service center where X filed its 2553 to be associated with that 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 sent 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