

**Internal Revenue Service**

Department of the Treasury

Number: **200324052**  
Release Date: 6/13/2003  
Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-163765-02

Date:

March 7, 2003

X =

A =

D1 =

Year 1 =

Dear :

This letter responds to your letter, dated November 14, 2002, 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 in Year 1. A, as the sole shareholder and president of X, represents that X was intended to be an S corporation beginning Year 1, its first taxable year. A copy of the organizational resolutions adopted by the board of directors of X evidences this intent. However, no Form 2553, Election by a Small Business Corporation, was filed with the Internal Revenue Service. For Year 1, and all subsequent years, X filed a Form 1120S, U.S. Income Tax Return for 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 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to X and X's second authorized representative.

Sincerely yours,

Carolyn Hinchman Gray  
Senior Counsel  
Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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