

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:

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Date:

December 9, 1998

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to your July 21, 1998 ruling request and subsequent correspondence submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1 of Year 1 with two wholly-owned subsidiaries. A, the president of X, represents that the shareholders intended for X to elect to be an S corporation from the date of incorporation. X relied on its attorney and accountant to coordinate the preparation and filing of Form 2553 (Election by a Small Business Corporation). However, due to miscommunication, the attorney believed that the accountant had prepared Form 2553 along with the Forms 966 (to effect qualified subchapter S subsidiary (QSSS) elections for the two subsidiaries). The accountant believed that the attorney had prepared and filed Form 2553 with the other incorporation documents. Timely QSSS elections were made for X's subsidiaries. Believing that Form 2553 had been timely filed, X filed Form 1120S (U.S. Income Tax Return for an S corporation) and the shareholders filed Forms 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation for Year 1. The service center informed X that it could not process Form 1120S because it had no evidence that a Form 2553 had been filed for X.

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. Further, because X's S election will be effective for its Year 1 taxable year, the QSSS elections for X's two subsidiaries will also be effective 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 sent to X.

Sincerely yours,

J. THOMAS HINES  
Senior Technician Reviewer  
Branch 2  
Office of the Assistant  
Chief Counsel  
(Passthroughs and Special  
Industries)

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