

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-121234-98

Date:

March 19, 1999

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated November 17, 1998, and subsequent correspondence, submitted by you as X's authorized representative 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 a written action, X's board of directors resolved that the officers of X be authorized and directed to take such steps as necessary for X to be taxed as an S corporation. A and B, the sole shareholders and officers of X, relied on X's attorneys to file the forms necessary for X to elect to be an S corporation effective for X's Year 1 taxable year. However, due to miscommunication as to who was responsible for preparing a Form 2553, Election by a Small Business Corporation, for X's Year 1 taxable year, the Form 2553 was not filed.

When X's accountant determined that no Form 2553 had been filed, he prepared and filed returns for X as a C corporation. Therefore, for Year 1 and Year 2, X and its shareholders filed Form 1120, U.S. Corporation Income Tax Return and Form 1040, U.S. Individual Income Tax Return, consistent with X being a C

corporation. X and its shareholders agree to make adjustments consistent with the treatment of X as 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 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 forwarded 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 § 6110 purposes