

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-102739-00

Date:

May 25, 2000

X =

Date 1 =

Date 2 =

Year 1 =

Year 2 =

Dear :

This letter responds to a January 20, 2000 letter that X's authorized representative submitted on behalf of X concerning relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 of Year 1. X's corporate minutes indicate that X and its shareholder intended X to be an S corporation for Year 1. X's attorney sent X's Secretary/Treasurer a blank Form 2553 (Election by a Small Business Corporation) with instructions that the Form be filed no later than Date 2 of Year 1. However, because X's in-house accounting and legal staff were heavily involved in other business for X, X failed to file Form 2553 by Date 2 of Year 1. When X realized that it had not filed a Form 2553 timely for Year 1, X immediately filed the form effective for Year 2. Upon the advice of its accountant, X filed a Form 1120S (U.S. Income Tax Return for an S Corporation) for Year 1. Subsequently, X received a letter from its service center indicating that it could not process X's Form 1120S for Year 1 because X's filed Form 2553 had an effective date for Year 2.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) for any taxable year is made 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 Year 1, 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, we express no opinion 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, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,
J. THOMAS HINES
Acting Chief, Branch 2
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
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