

Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: **200011032**
Release Date: 3/17/2000

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-117190-99

Date:

December 20, 1999

X =

A =

D1 =

Year 1 =

Dear :

This letter responds to a letter, dated October 17, 1999, and subsequent correspondence, submitted on behalf of X by its authorized representative, 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 he intended that X was to be an S corporation beginning Year 1, its first taxable year. The Unanimous Consent of Sole Director of X evidences this intent. For Year 1 X filed a Form 1120S, U.S. Income Tax Return for an S Corporation and A filed an individual tax return consistent with X being an S corporation. A relied on X's accountant to file a Form 2553, Election by a Small Business Corporation, for X. X's accountant believes that he timely filed a Form 2553. However, the Service Center has no record that a Form 2553 was filed with the Internal Revenue Service.

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, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

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

Enclosures: 2
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