

Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: 200023042

Person to Contact:

Release Date: 6/9/2000

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-102939-00

Date:

March 15, 2000

X =

A =

D1 =

Year 1 =

Dear :

This letter responds to a letter dated November 29, 1999, and subsequent correspondence submitted by 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. A, the vice president and secretary of X, represents that X was intended to be an S corporation as evidenced by X's state Joint Tax Application dated D1, which indicates that X's "Type of Ownership" is "Sub Chapter S." A further represents that the shareholders of X did not know that they needed to file a Form 2553, Election by a Small Business Corporation, for X to be treated as an S corporation. Therefore, no Form 2553 was filed for X. For the Year 1 taxable year and all subsequent taxable years, X filed a Form 1120S, U.S. Income Tax Return for an S corporation.

X and its shareholders agree to file amended corporate and personal income tax returns consistent with the treatment of X as an S corporation beginning with the Year 1 taxable year.

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. This ruling is conditioned on X and its shareholders filing, within 60 days following the date of this letter, amended returns for the Year 1 taxable year and all subsequent taxable years consistent with the treatment of X as an S corporation beginning with the Year 1 taxable year. A copy of this letter should be attached to each such return.

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'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  
Copy of this letter  
Copy for § 6110 purposes