

INTERNAL REVENUE SERVICE

Index No. : 1362.00-00

Number: **199912006**

Release Date: 3/26/1999

CC:DOM:P&SI:2 - PLR-116124-98

December 14, 1998

X = .

A =

Date 1 =

Year 1 =

Dear :

This responds to a letter dated August 10, 1998, submitted on behalf of X by X's authorized representative, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1 of Year 1. A, as X's president, represents that it was the intent of X that X be an S corporation effective for Year 1, its first taxable year, but a Form 2553, Election by a Small Business Corporation, was not timely filed for that year because of an error by the law firm handling X's S election. A represents that X filed its Year 1 return consistent with S corporation status.

Section 1362(b)(5) of the Code provides that if – (A) an election under section 1362(a) is made for any taxable year after the date prescribed by section 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 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 first taxable year. Accordingly, provided 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 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 under any other provision of the Code, including whether X was or is a small business corporation under section 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 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
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2

Copy of this letter

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