

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **200013007**

Person to Contact:

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Telephone Number:

Refer Reply To:

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Date:

December 22, 1999

X =

A =

B =

D1 =

Year 1 =

Dear :

This letter responds to your letter dated October 21, 1999, submitted 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 of Year 1. A and B, the shareholders of X represent that they intended that X begin operations as an S corporation beginning in Year 1, X's first taxable year. X's Form SS-4, Application for Employer Identification Number, and X's Action of the Shareholders of X Without a Meeting indicate that X intended to be an S corporation. However, due to a miscommunication, X's attorney and accountant each thought that the other filed a Form 2553, Election by a Small Business Corporation, on behalf of X. Thus, a Form 2553 was not timely filed by X for Year 1. For Year 1, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and X's shareholders filed Form 1040, U.S. Individual Income Tax Return, consistent with X being 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 first 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 sent to X.

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
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