

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:

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Date:

October 14, 1999

X =

A =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to a June 8, 1999 letter and subsequent correspondence submitted on behalf of X by X's authorized representative requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 of Year 1 but was dormant until Date 2 of Year 2. An affidavit from X's attorney indicates that A, the president and sole shareholder of X, verbally instructed X's attorney to prepare and file the papers necessary to make a valid S corporation election for Year 2. A, having no familiarity with the actual mechanics of an S election, assumed that X's attorney had executed his instructions. In Date 3 of Year 3, X's accountant requested a copy of Form 2553 (Election by a Small Business Corporation). At that point, the parties discovered that X's attorney had failed to file Form 2553. A Date 3 of Year 3 request for relief to make a late S corporation election under Rev. Proc. 98-55, 1998-46 I.R.B. 27 was denied.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) 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 2 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 2, within 60 days following the date of this letter, then such election will be treated as timely made for X's Year 2 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 the power of attorney on file, a copy of this letter is being sent to X and one of 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
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