

INTERNAL REVENUE SERVICE
Index No.: 1362.01-03
Number: **199935012**
Release Date: 9/3/1999

CC:DOM:P&SI:2 - PLR-104677-99

May 28,1999

X =

A =

D1 =

Year 1 =

Year 2 =

Dear :

This responds to a letter dated February 25, 1999, submitted on X's behalf by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. The sole shareholder of X is A. A, as X's president, represents that it was A's intent that X elect to be an S corporation effective D1. A represents that he relied on X's tax accountant to prepare the appropriate filing for X's election to be an S corporation effective D1. However, a Form 2553, Election by a Small Business Corporation, was not filed for X.

The missed election was discovered in Year 2 when the new accountant for X was preparing X's tax return for Year 1. Accordingly, X filed a tax return for Year 1 on Form 1120 rather than on Form 1120S. A did not include what would otherwise have been his distributive share of X's income, gain, loss, deductions or credit on his Form 1040 for Year 1. X and A represent that they will amend their tax returns for Year 1 to be consistent with the treatment of X as an S corporation for the affected 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 effective D1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D1, within 60 days of the date of this letter, then such election will be treated as effective D1. A copy of this letter should be attached to the Form 2553.

Except as specifically ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions 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 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
Copy for section 6110 purposes