

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Release Date: 3/10/2000

Telephone Number:

Refer Reply To:

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Date:

December 7, 1999

X =

A =

B =

C =

D1 =

Year 1 =

Dear :

This letter responds to your letter dated September 15, 1999, and subsequent correspondence, 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, B, and C, the shareholders of X, represent that they intended that X elect to be an S corporation beginning Year 1, its first taxable year. X's Writing in lieu of the Organizational Meeting of the Incorporators and the First Meeting of the Board of Directors and Shareholders of X, indicate that X intended to be an S corporation. A, as X's president, represents that X instructed its advisors to prepare and file an S corporation election on behalf of X. However, a Form 2553, Election by a Small Business Corporation, was not filed timely on behalf of X for Year 1.

For Year 1, X and its shareholders filed their federal income tax returns consistent with the treatment of X as a C corporation. X and its shareholders agree to amend their tax

returns consistent with the treatment of X as an S corporation for X's 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) 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
Copy for § 6110 purposes