

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:

March 14, 2000

X =

A =

D1 =

Year 1 =

Dear :

This letter responds to a letter, dated June 30, 1999, and subsequent correspondence, submitted on behalf of X by its authorized representative, 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, as X's president, represents that X was intended to be an S corporation beginning Year 1, its first taxable year. The Minutes of the Organizational Meeting of the Board of Directors of X evidences this intent. A Form 2553, Election by a Small Business Corporation, was filled out and signed by one shareholder but the other shareholder's secretary mistakenly placed the form in a filing cabinet. Therefore, no Form 2553 was filed with the Internal Revenue Service. For Year 1 and subsequent years X has filed a Form 1120S, U.S. Income Tax Return for an S Corporation, and X's shareholders have filed individual tax returns 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 Year 1 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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

J. THOMAS HINES
Acting Branch Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
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