

INTERNAL REVENUE SERVICE
Index No.: 1362.01-03
Ruling: **199923031**
Release Date: 6/11/1999

CC:DOM:P&SI:2 - PLR-117664-98
March 12,1999

X =

B =

D1 =

Dear :

This responds to a letter dated September 3, 1998, 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 in D1 of Year 1. The shareholders of X were A, and B. A, the president of X, represents that although it was the intent of X and the shareholders of X for X to be an S corporation beginning with Year 1, its first taxable year, a Form 2553, Election by a Small Business Corporation, was not filed by the accountant for X for Year 1. X filed its tax return for Year 1 using Form 1120S and the shareholders of X each filed their Form 1040 based on X being an S corporation for Year 1.

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, Year 1. Accordingly, provided that X makes an election to be an S corporation by filing a 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 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.

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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