

**Internal Revenue Service**

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-120277-98

Date:

February 3, 1999

Number: **199917057**

Release Date: 4/30/1999

X =

A =

D1 =

Year 1 =

Dear

This letter responds to your letter dated August 26, 1998, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. A, the sole shareholder of X, intended that X elect to be an S corporation beginning in Year 1, its first taxable year. X's accountant was requested to file all necessary documents for tax filing purposes in order for X to be considered an S corporation. This direction was intended to include Form 2553, Election by a Small Business Corporation. A was unfamiliar with the requirements for filing an election to be an S corporation and believed that X's accountant had complied with all the requirements. In an affidavit, X's accountant stated that although he knew he was supposed to file the S corporation election, he mistakenly did not file an S corporation election for X.

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. 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 your authorized representative.

Sincerely yours,

ARTHUR H. ERNST  
Chief, Branch 2  
Office of the Assistant  
Chief Counsel  
(Passthroughs and  
Special Industries)

Enclosures: 2  
Copy of this letter  
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