

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-117855-00

Date:

January 9, 2001

X =

A =

D1 =

D2 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated September 8, 2000, and subsequent correspondence, submitted by you as X's authorized representative 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, the president, chief executive officer, and sole shareholder of X, represents that X was intended to be an S corporation from its inception. However, due to confusion between X and its accountant, no Form 2553, Election by a Small Business Corporation, was filed for X effective for Year 1. Believing that it had forfeited its opportunity to elect to be treated as an S corporation, X filed federal income tax returns as a C corporation for Year 1 and all subsequent years. On D2 of Year 2, the directors of X resolved to elect subchapter S status for X. However, due to mistaken advice by X's accountant, no Form 2553 was filed effective for X effective for Year 2. When X retained a new accountant, the new accountant advised X that it was eligible to elect to be treated as an S corporation for Year 2.

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 2 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 2 taxable year, within 60 days following the date of this letter, then such election will be treated as timely made for X's Year 2 taxable year. A copy of this letter should be attached to the Form 2553. This ruling is conditioned on X and its shareholder filing, within 60 days following the date of this letter, amended federal income tax returns consistent with the treatment of X as an S corporation effective for the Year 2 taxable year.

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 forwarded to X.

Sincerely yours,
J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes