

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

December 14, 1998

X =

A =

D1 =

D2 =

D3 =

Year 1 =

State =

Dear :

This letter responds to a letter dated September 29, 1998 and subsequent correspondence submitted by X's authorized representative on behalf of X, requesting a ruling under §§ 1361 and 1362 of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. A, the sole shareholder of X, states that he instructed X's accountant and legal advisor to prepare the necessary documents for X to make an S election effective for X's Year 1 taxable year. However, both the accountant and legal advisor failed to timely file a Form 2553, Election by a Small Business Corporation, for X's Year 1 taxable year. It is represented that both X and A have filed returns consistent with S corporation status 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 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.

The information submitted additionally states that X's corporate charter was revoked on D2 for failure to pay the annual franchise tax to State. When X received notice of the overdue tax, it paid the tax in full, and its charter was reinstated on D3. The reinstatement, under the laws of State, provides that X's corporate existence shall be deemed to have continued without interruption.

Based on the facts and representations described above, it is held that, provided that X qualified as a small business corporation under § 1361(b) of the Code prior to the revocation of its charter, X's status as a small business corporation is not terminated by reason of the revocation of its charter and its subsequent reinstatement, and X will not be required to make a new election under § 1362(a) of the Code.

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. § 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, copies of this letter are being sent to X's authorized representatives.

Sincerely yours,

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

Enclosures: 2  
Copy of this letter  
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