

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199946024**

Person to Contact:

Release Date: 11/19/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-107640-99

Date:

August 24, 1999

X =

H =

W =

Date 1 =

Year 1 =

Year 2 =

Dear

This letter responds to a January 6, 1999 letter and subsequent correspondence submitted on behalf of X by X's authorized representative requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 of Year 1. H and W, the sole shareholders of X since incorporation, represent that they signed a Form 2553 (Election by a Small Business Corporation) after incorporation and believed that X's then accountant had filed the form for Year 1. After a Form 1120S (U.S. Income Tax Return for an S Corporation) was filed for Year 1, and H and W filed their Form 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation, the service center notified X that it did not have a Form 2553 on file for X and therefore could not process its Year 2 Form 1120S. H and W represent that they gave the service center notice to X's then accountant and believed that the problem was resolved. H and W engaged a new accountant to prepare X's Year 2 Form 1120S. Again, after the Form 1120S was filed, the service center notified X that it did not have a Form 2553 on file for X and therefore could not process its Year 2 Form 1120S. H and W represent that they filed their Form 1040

(U.S. Individual Income Tax Return) consistent with X being an S corporation for Year 1 and Year 2.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) 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 Year 1, 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, we express no opinion 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 the power of attorney on file, a copy of this letter is being sent to X's authorized representative.

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
Copy for § 6110 purposes

