

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **200007028**

Person to Contact:

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Telephone Number:

Refer Reply To:

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Date:

November 22, 1999

Legend

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to a June 30, 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. The Minutes of the First Meeting of the Stockholder and Director of X indicate that A, the president and sole shareholder of X, intended X to be an S corporation beginning with X's Year 1 taxable year. A represents that A relied on X's legal counsel to establish X and to make the proper election to be an S corporation. A discovered that Form 2553 (Election by a Small Business Corporation) had not been filed when X's accountant requested proof of acceptance of X's subchapter S status during the preparation of X's Year 1 Form 1120S (U.S. Income Tax Return for an S corporation). A filed A's Year 1 Form 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) for any taxable year is made 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,

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and Special
Industries)

Enclosures: 2
Copy of this letter
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