

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-116016-98

Date:

December 1, 1998

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to the July 22, 1998 ruling request submitted by you on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that on Date 1 of Year 1 A transferred the assets of a business to X in exchange for X's stock. A, as X's president, represents that X intended to elect to be an S corporation from inception. A also represents that X's accountant believed that X's attorney had drafted and filed a Form 2553 (Election by a Small Business Corporation) for X to be effective Year 1 and the attorney thought the accountant had drafted and filed a Form 2553. Meanwhile, X and A had received assurances from both the attorney and accountant that the necessary documents had been executed and filed. However, a Form 2553 was not filed 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.

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 the power of attorney on file with this office, a copy of this letter is being forwarded to X.

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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