

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Number: **199933023**

Person to Contact:

Release Date: 8/20/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-103465-99

Date:

May 20, 1999

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to a January 29, 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 was incorporated on Date 1 of Year 1 with the intent to be an S corporation. X's president, A, represents that X's attorney prepared but failed to file Form 2553 (Election by a Small Business Corporation). Believing that Form 2553 had been properly filed, X's accountant prepared and filed Form 1120S (U.S. Income Tax Return for an S Corporation) for Year 1 and each year thereafter. X's shareholder has included in Form 1040 (U.S. Individual Income Tax Return) the income from Schedule K-1 of X's Form 1120S.

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.

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Pursuant to a power of attorney on file with this office, 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  
Copy for § 6110 purposes