

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Release Date: 3/31/2000

Telephone Number:

Refer Reply To:

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Date:

January 3, 2000

X =

A =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated October 1, 1999, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was formed on D1 and began operations in Year 1. A, the sole shareholder of X, represents that A intended for X to be an S corporation beginning in Year 1 and that A believed that A had timely filed a Form 2553, Election by a Small Business Corporation, for X. However, a Form 2553 was not timely filed for X for Year 1. For Year 1 and Year 2, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and X's shareholder filed 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) 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 Year 1. 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.

Sincerely yours,

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

Enclosures: 2  
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