

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 - PLR-109222-00

Date:

August 18, 2000

X =

A =

D1 =

D2 =

Year 1 =

Dear :

This letter responds to a letter dated March 23, 2000, and subsequent correspondence submitted by you as X's authorized representative on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 of Year 1, but did not have any shareholders, assets, or business activities until D2 of Year 1. A, the president of X, represents that X was intended to be an S corporation from the date X began doing business. This intent is evidenced by X's Form SS-4, Application for Employer Identification Number, and Form 8716, Election to Have a Tax Year Other Than a Required Tax Year, both of which indicate that X is an S corporation. X's accounting firm prepared a Form 2553, Election by a Small Business Corporation, and transmitted the form to X to be signed and filed with the Service. Both X and the accountants thought that the Form 2553 was filed timely. However, the Service does not have a record of a Form 2553 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 taxable year beginning D2 of 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 taxable year beginning D2 of Year 1, within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning D2 of Year 1. 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 a power of attorney on file with this office, copies of this letter are being forwarded to X and to X's other authorized representative.

Sincerely yours,

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

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes