

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-118232-99

Date:

February 14, 2000

X =

A =

Accountant =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter, dated November 15, 1999, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 in Year 1. A, as president of X, represents that X was intended to be an S corporation beginning Year 1, its first taxable year. A filed Form SS-4, Application for Employer Identification Number, evidencing this intent. A represents that X filed timely with the Internal Revenue Service a Form 2553, Election by a Small Business Corporation. However, the Service has no record of this Form 2553. Based on the advice of Accountant, X initially filed a Form 1120, U.S. Income Tax Return for a Corporation, for Year 1. X later filed a Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1 and Year 2. X's shareholders have filed individual tax returns consistent with X's Forms 1120S.

X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require for Year 1 and Year 2.

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. X and its shareholders should file any amended returns to ensure X's compliance with § 1378. A copy of this letter should be attached to any such amended returns.

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 requesting 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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