

INTERNAL REVENUE SERVICE
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December 24, 1998

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear :

This responds to a letter dated August 5, 1998, and subsequent correspondence, written 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. A, as X's president, represents that A and B intended for X to be an S corporation for federal tax purposes as of Year 1, X's first taxable year. A instructed X's attorney to prepare all necessary papers for S corporation status for X for Year 1. However, X's attorney did not timely file a Form 2553, Election by a Small Business Corporation, for X for Year 1. X's accountant subsequently, in Year 2, filed a Form 2553 containing an effective date of D1 of Year 1.

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 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 first taxable year. Accordingly, the election made by X to be an S corporation by filing the Form 2553, which contained an effective date for its Year 1 taxable year, will be treated as timely made for X's Year 1 taxable year. X should send a copy of this letter to the service center where X filed its Form 2553 to be associated with that 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)

Enclosure: 2
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