

## Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: **200018047**  
Release Date: 5/5/2000

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-119807-99

Date:

February 10, 2000

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to your letter dated December 9, 1999, and subsequent correspondence, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 of Year 1. A and B, the shareholders of X, intended that X elect to be an S corporation beginning in Year 1, its first taxable year. However, A and B were not aware of the time requirements for filing a Form 2553, Election by a Small Business Corporation. X filed a Form 2553 containing an effective date of D1 of Year 1. However, X failed to file the Form 2553 timely for X's Year 1 taxable year. X's service center accepted the Form 2553 effective for X's Year 2 taxable year. X filed Form 1120-A, U.S. Corporation Short-Form Income Tax Return, for Year 1. For Year 2, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and A and B filed consistent with X being an S corporation.

X, A, and B agree to amend their tax returns consistent with the treatment of X as an S corporation for X's Year 1 taxable year.

Section 1362(b)(5) of the Code provides that if -- (A) an election under section

1362(a) is made for any taxable year after the date prescribed by section 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 first taxable year. Accordingly, the election made by X to be an S corporation by the filing of the Form 2553, which contained an effective date of D1 of Year 1, 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. This ruling is conditioned on X, A, and B filing, within 60 days following the date of this letter, amended returns to report consistent with X being an S corporation beginning with its Year 1 taxable year. A copy of this letter should be attached to each of the 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 section 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, 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 section 6110 purposes