

INTERNAL REVENUE SERVICE
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January 4, 1999

X =

A =

B =

C =

D1 =

Year 1 =

Dear :

This responds to a letter dated September 1, 1998, 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 of Year 1. A and B, X's shareholders, represent that they intended for X to be treated as an S corporation for federal tax purposes as of Year 1, X's first taxable year. A and B relied on X's attorney, C, to handle all the paperwork that needed to be filed to secure S corporation status for X for Year 1. However, C did not file a Form 2553, Election by a Small Business Corporation, for X for 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, 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 of 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)

Enclosure: 2
Copy of this letter
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