

INTERNAL REVENUE SERVICE
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November 5, 1999

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear

This letter responds to a letter dated July 26, 1999, and subsequent correspondence, submitted on behalf of X 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 with the intent to be an S corporation. X's shareholders, A and B, represent that they signed a Form 2553, Election by a Small Business Corporation, for X to be an S corporation effective for Year 1. The shareholders provided the Form 2553 to X's attorney who was to file the Form 2553. However, the Internal Revenue Service has no record of a Form 2553 for X. X filed Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1 and Year 2. X's shareholders filed their tax returns for those years consistent with X being an S corporation.

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 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.

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.

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
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