

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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CC:DOM:P&SI:2 - PLR-120311-98

Date:

February 26, 1999

X =

A =

B =

C =

D =

D1 =

Year 1 =

State =

Dear :

This letter responds to a letter dated October 19, 1998, and subsequent correspondence, written on behalf of X by its authorized representative, 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, B, C, and D, the sole shareholders of X, intended that X elect to be an S corporation beginning Year 1, its first taxable year. However, a Form 2553, Election by a Small Business Corporation, was not timely filed for that year because X's attorney, upon whom X had

relied to handle the matter, failed to file the form. Notwithstanding that failure, a State S Corporation Election and Shareholders' Consent was timely filed for Year 1.

For Year 1, X and its shareholders filed their federal income tax returns consistent with the treatment of X as a C corporation. X and its shareholders 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 § 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 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 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 § 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
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