

Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: 199921031
Release Date: 5/28/1999

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-121977-98

Date:

February 25, 1999

X =

A =

D1 =

D2 =

D3 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated December 3, 1998 and subsequent correspondence submitted by X's authorized representative 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, the sole shareholder of X at incorporation and the president of X, represents that X intended to be an S corporation beginning Year 1. A represents also that X relied on the advice of an enrolled agent to handle individual and small business tax matters. The enrolled agent did not inform A of the need to file a Form 2553, Election by a Small Business Corporation, and therefore no Form 2553 was filed for X for Year 1. Subsequently, X filed a Form 2553, which was accepted effective D2.

For Year 1 and Year 2, X filed a Form 1120, U.S. Corporation Income Tax Return, and A filed a Form 1040, U.S. Individual Income Tax Return, consistent with the treatment of X as a C corporation. X and its shareholders have agreed to make adjustments consistent with the treatment of X as an S corporation.

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 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. This ruling is conditioned on X and its shareholders filing, prior to D3, amended returns for any taxable years for which they filed returns inconsistent with the treatment of X as an S corporation.

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 forwarded 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 § 6110 purposes