

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

March 4, 1999

X =

A =

B =

D1 =

D2 =

D3 =

D4 =

D5 =

Year 1 =

Dear :

This letter responds to your letter dated October 5, 1998, and subsequent correspondence, submitted 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. At X's incorporation, A was X's sole shareholder. Since A's death on D4, B, A's surviving spouse, has been the sole shareholder of X. B represents that A intended that X elect to be an S corporation beginning D1 of Year 1, its first day of its

first taxable year. A relied on X's accountants to timely file a Form 2553, Election by a Small Business Corporation. The accountants believed that X's attorney would timely file a Form 2553 on behalf of X. However, due to miscommunication between X's accountants and attorney, X failed to timely file a Form 2553 effective as of D1 of Year 1. Upon learning that the Form 2553 had not been filed, X's accountants immediately filed a Form 2553, which was accepted effective D3. Accordingly, X filed a Form 1120, U.S. Corporation Income Tax Return, reporting as a C corporation for the period beginning on D1 of Year 1 and ending on D2 of Year 1.

X and B agree to make adjustments consistent with the treatment of X as an S corporation effective as of D1 of 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 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 as of D1 of Year 1, within 60 days of the date of this letter, then such election will be treated as timely made for that date. A copy of this letter should be attached to the Form 2553. Additionally, this ruling is conditioned upon X and its shareholders amending, by D5, their income tax returns for Year 1 to be consistent with the treatment of X as an S corporation effective as of D1 of Year 1.

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.

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