

Internal Revenue Service

Department of the Treasury

Index Number: 1362.01-03

Washington, DC 20224

Number: 199939026

Person to Contact:

Release Date: 10/1/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-104910-99

Date:

July 2, 1999

X =

A =

Month =

Date =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to a February 4, 1999 letter and subsequent correspondence submitted on behalf of X by X's authorized representative requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated in Month of Year 1. A, the sole shareholder of X since incorporation and the president of X, believed that X's accountant had filed Form 2553 (Election by a Small Business Corporation) in Month of Year 1. A represents that, believing that Form 2553 had been filed, X used a Form 1120S (U.S. Income Tax Return for an S Corporation) when filing its returns for Year 2 and Year 3. A, also represents that X had no activity for Year 1 and Year 2. For Year 3, A included in Form 1040 (U.S. Individual Income Tax Return) a loss from Schedule K-1 of X's Form 1120S. After the service center notified X that it did not

have a Form 2553 on file for X and therefore could not process its Year 3 Form 1120S, the service center disallowed the loss that A reported based on the Schedule K-1 of X's Form 1120S. A represents that in Date, A paid the additional tax for the disallowed loss.

X and A agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) 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 X's Year 1, 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 conditional on X and A filing, within 60 days following the date of this letter, any amended returns consistent with the treatment of X as an S corporation beginning with its Year 1 taxable year.

Except as specifically set forth above, we express no opinion 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)

Enclosures: 2  
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