

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

September 15, 1999

X =

A =

B =

C =

D =

D1 =

D2 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated March 4, 1999, 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, but X did not have any shareholders, assets, or business operations until D2. The original shareholders of X were A, B, C, and D. A, the president of X, represents that X's shareholders intended for X to be an S corporation. Based on erroneous advice from X's prior counsel, A mistakenly believed that the S corporation election could be made on X's Year 1 tax return. In addition, X did not file a tax return for Year 1

because of low financial activity of the asset held by X. Therefore, no Form 2553, Election by a Small Business Corporation, was timely filed for X for Year 1 or any prior year. X eventually filed an election to be an S corporation, which election was accepted for X's Year 2 taxable year.

X's shareholders agree to amend their tax returns consistent with the treatment of X as an S corporation effective beginning with the 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 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 filing, within 60 days following the date of this letter, a Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1 and X's shareholders filing, within 60 days following the date of this letter, amended returns for Year 1 consistent with the treatment of X as an S corporation effective for the Year 1 taxable year. A copy of this letter should be attached to each such return.

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