

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:

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Date:

July 9, 1999

X =

A =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This letter responds to your December 12, 1998 letter and subsequent correspondence requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1. A, the president and a shareholder of X, represents that the shareholders of X intended X to be formed as an S corporation and believed that Form 2553 (Election by a Small Business Corporation) had been filed upon incorporation. However, a Form 2553, which indicated that X's first taxable year began in Date 2 of Year 1, was not filed until Date 3 of Year 2 after X's service center notified X that the service center did not have a Form 2553 on file for X and therefore could not process its Form 1120S (U.S. Income Tax Return for an S Corporation) for Year 1. X's shareholders have included in Form 1040 (U.S. Individual Income Tax Return) their tax items from Schedule K-1 of X's Form 1120S.

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 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.

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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