

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Date:

9/3/99

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear :

This letter is in response to a July 19, 1999, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. However, operations did not begin and shares were not issued until Year 1. A and B each own 50 percent of the stock of X. A, as X's president, represents that X and its shareholders intended that X elect to be an S corporation beginning in Year 1. The Minutes of the Organization Meeting of the Board of Directors of X indicate that X was to elect S corporation status. X also filed its Form SS-4, Request for Employer Identification Number, indicating that it was an S corporation. A and B relied on X's accountant in matters pertinent to incorporation and taxes and believed that all forms necessary for X to elect S corporation status were filed with the Internal Revenue Service. However, X's accountant, after completing a Form 2553, Election by a Small Business Corporation, failed to submit it to X and its shareholders for signature and filing. Therefore, no Form 2553 was filed with the Internal Revenue Service.

For Year 1 and Year 2, X filed a Form 1120S, U.S. Income Tax Return for an S Corporation. A and B filed their individual tax returns for Year 1 and Year 2 consistent with X being 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) 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.

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 requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent 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

