

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

September 21, 1999

X =

A =

B =

C =

D =

E =

D1 =

Year 1 =

Dear :

This letter responds to your letter dated March 17, 1999, and subsequent correspondence, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. A, B, C, D, and E, the shareholders of X, intended that X elect to be an S corporation beginning in Year 1, its first taxable year. An agreement among A, B, C, D, and E to form X indicates that X was to be an S corporation. X hired an agency to file all its corporate filings and relied on that agency to prepare the necessary forms for X to be an S corporation. However, a Form 2553, Election by a Small Business Corporation, was not timely filed on behalf of X for Year 1. For Year 1 and subsequent years, X filed Form 1120S, U.S. Income Tax Return for an S Corporation, and A filed Form 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation.

B, C, D, and E agree to amend their tax returns consistent with the treatment of X as an S corporation for X's Year 1, and subsequent years.

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 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 B, C, D, and E filing, within 60 days following the date of this letter, amended returns to report consistent with X being an S corporation beginning with its Year 1 taxable year. A copy of this letter should be attached to each of the amended returns.

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'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