

INTERNAL REVENUE SERVICE
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CC:DOM:P&SI:2 - PLR-109696-99
Sept 29 1999

X =

A =

B =

D1 =

Year 1 =

Dear

This responds to your letter dated May 10, 1999, submitted on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated in D1 of Year 1. The shareholders of X are A and B. A, as X's president, represents that it was the intent of X and the shareholders of X for X to operate as an S corporation. A further represents that X relied on its attorney to prepare and file the necessary forms for the corporation to be treated as an S corporation. However, the attorney failed to file a Form 2553, Election by a Small Business Corporation, for X for Year 1, X's first taxable year. For the Year 1 taxable year, X filed its tax return using Form 1120S, U.S. Income Tax Return for an S Corporation, and the shareholders of X filed their respective returns based on 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) 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.

Except as specifically ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions 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 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
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