

INTERNAL REVENUE SERVICE
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CC:DOM:P&SI:2 - PLR-107492-99
August 18, 1999

X =

A =

B =

C =

D =

D1 =

D2 =

Year 1 =

Year 2 =

Year 3 =

Dear

This responds to your letter dated April 14, 1999, and subsequent correspondence submitted on X's behalf, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. The shareholders of X are A, B, C, and D. B, as X's secretary, represents that it was the shareholders' intent that X elect to be an S corporation effective D2 of Year 1. B represents that X relied on X's outside accountant to prepare a Form 2553, Election by a Small Business Corporation, to be effective for X's Year 1 tax year. B further represents that the former bookkeeper for X timely mailed the Form 2553 to the appropriate service center. However, the service center has no record of the Form 2553 on file. For the Year 1, Year 2 and Year

3 tax years, X filed its tax return using Form 1120S, U.S. Income Tax Return for an S corporation, and the shareholders of X filed their returns 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 tax year after the date prescribed by § 1362(b) for making such election for such tax year or no such election is made for any tax 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 tax 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 tax 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 tax year, within 60 days of the date of this letter, then such election will be treated as timely made for X's Year 1 tax 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.

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