

Internal Revenue Service

Department of the Treasury

Index Number: 1362.00-00  
Number: 199914026

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2 - PLR-119121-98

Date:

January 8, 1999

X =

A =

D1 =

D2 =

Year 1 =

Year 2 =

Dear :

This letter responds to the letter dated September 30, 1998, and subsequent correspondence submitted by X's authorized representative on behalf of X, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 and that the shareholders of X intended that X be an S corporation effective Year 1, X's first taxable year. A, the president of X, relied on X's attorney to timely file a Form 2553, Election by a Small Business Corporation, for X's Year 1 taxable year. However, it was later discovered that the form most likely had never been filed. On D2, a Form 2553, containing an effective date of D1, was filed, requesting that X be an S corporation effective for its Year 1 taxable year. The service center accepted the Form 2553 for X's Year 2 taxable year.

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, the election made by X to be an S corporation by the filing of the Form 2553, which contained an effective date of D1 for the election, will be treated as timely made for X's Year 1 taxable year. X should send a copy of this letter to the service center where X filed its Form 2553 to be associated with that 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 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 forwarded 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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