

**Internal Revenue Service**

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

Number: **199917014**

Person to Contact:

Release Date: 4/30/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-118021-98

Date:

January 15, 1999

X =

A =

B =

C =

D =

E =

F =

G =

H =

I =

J =

K =

L =

Date 1 =

Date 2 =

Month =

Year 1 =

Dear :

This letter responds to X's September 1, 1998 letter and subsequent correspondence, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1. D, as X's Chairman of the Board, represents that A, B, and C, the initial shareholders of X, assert that they timely prepared, signed, dated, and filed a Form 2553, Election by a Small Business Corporation, for X to elect to be an S corporation beginning with Date 1. In Month of Year 1, X began full operations and D, E, F, G, H, I, J, K, and L became shareholders of X. X filed a Form 1120S, U.S. Income Tax Return for an S corporation, for its Year 1 taxable year. D represents that all of X's shareholders during Year 1 filed their personal income tax returns for Year 1 treating X as an S corporation. In a letter dated Date 2, X's service center advised X that the service center had no record of the filing of a Form 2553 for X.

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 effective Date 1. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 1, within 60 days following the date of this letter, then such election will be treated as timely made effective Date 1. 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 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.

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