

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Date:

March 15, 1999

X =

A =

B =

D1 =

D2 =

D3 =

D4 =

D5 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This letter responds to your letter signed November 16, 1998 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 of Year 1. A and B, then the sole shareholders of X, intended that X begin its business on D2 of Year 1 and that X elect to be an S corporation. A and B relied on X's attorney to prepare X's S corporation election. However, a Form 2553, Election by a Small Business Corporation, was not filed for X's Year 1 taxable year. Rather, X, at its accountant's suggestion, filed a Form 2553 soon after it actually began business in D3 of Year 2, and

the Form 2553 was accepted for Year 3. X requests that its election to be an S corporation be treated as effective as of Year 2.

X, A, and B agree to make adjustments consistent with the treatment of X as 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 Year 2 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 2 taxable year, within 60 days following the date of this letter, then such election will be treated as timely made for X's Year 2 taxable year. A copy of this letter should be attached to the Form 2553. This ruling is conditioned on X, by D4, and A and B, by D5, filing any amended returns consistent with the treatment of X as an S corporation beginning with its Year 2 taxable year.

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.

Sincerely yours,

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
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