

INTERNAL REVENUE SERVICE  
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October 14, 1999

X =

A =

D1 =

Year 1 =

State =

Dear :

This is in reply to your letter dated July 1, 1999, and subsequent correspondence, written on behalf of X, requesting a ruling under section 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. X's shareholder, A, intended that X elect to be an S corporation beginning with its Year 1 taxable year. A directed X's attorney to take the necessary steps for X to be an S corporation. However, due to a misunderstanding between A and the attorney, a Form 2553, Election by a Small Business Corporation, was not filed for X. For X's Year 1 taxable year, X and its shareholder filed their federal tax returns consistent with X being treated as an S corporation.

Section 1362(b)(5) of the Code provides that if--(A) an election under section 1362(a) is made for any taxable year after the date prescribed by section 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 1

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 above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code, including whether X was or is a small business corporation under section 1361(b).

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  
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