

Internal Revenue Service

Department of the Treasury

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Person to Contact:

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Telephone Number:

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Date:

June 1, 1999

X =

A =

B =

D1 =

D2 =

D3 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated February 8, 1999, 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. A and B, the sole shareholders of X, relied on X's accountant to prepare and timely file a Form 2553, Election by a Small Business Corporation, effective for X's Year 1 taxable year. However, X's accountant failed to file a valid Form 2553 effective for X's Year 1 taxable year. In Year 2, A and B filed a Form 2553 to be effective for X's Year 2 taxable year. A and B represent that their accountant did not inform them of any time limitations concerning when they would need to file the Form 2553. In D2, X received a notice from X's Internal Revenue service center informing X that the Form 2553 had not been timely filed for Year 2. A and B represent that they did not understand the meaning of this notice, and treated X as an S corporation for

Year 2. In a notice dated D3, the service center informed X that its S corporation election was not valid for Year 2.

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.

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  
Copy for § 6110 purposes