

INTERNAL REVENUE SERVICE  
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June 9, 1999

X =

A =

B =

D1 =

D2 =

Year 1 =

Dear :

This responds to your letter dated February 3, 1999, and subsequent correspondence, written 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 of Year 1. The sole shareholder of X at the time of the incorporation of X was A. A subsequently sold A's interest in X to B in D2. A, as X's president at the time of the incorporation of X, represents that it was A's intent that X elect to be an S corporation effective for X's first taxable year, Year 1. The minutes of the first meeting of the board of directors for X reflect the intent of A that X elect S corporation status. However, A did not understand the requirement to file Form 2553, Election by a Small Business Corporation. Therefore, a Form 2553 was not filed for X. X filed its return for Year 1 on Form 1120S, U.S. Income Tax Return for an S Corporation. B, as the current president of X, represents that it is B's intent that X be 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 first taxable year. Accordingly, provided that X makes an election to be an S corporation by filing a Form 2553, signed by both A and B, 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 upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions 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 the 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