

Internal Revenue Service

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

Number: 199911024

Person to Contact:

Release Date: 3/19/1999

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:2-PLR-118088-98

Date:

December 16, 1998

X =

B =

Date 1 =

Year 1 =

Dear :

This letter responds to your September 2, 1998 ruling request submitted on behalf of X requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1 of Year 1. B, X's president and sole shareholder, represents that B intended for X to elect to be an S corporation from the date of incorporation. In furtherance of this objective, X's accountant prepared and sent a Form 2553 (Election by a Small Business Corporation) to B with instructions to execute and timely mail the form for the S election to be effective for Year 1. B believes that the Form 2553 was mailed but has no proof of the mailing. Believing that Form 2553 had been filed, X filed a Form 1120S (U.S. Income Tax Return for an S Corporation) and B included the income of X on B's Form 1040 (U.S. Individual Income Tax Return). The service center informed X that it could not process X's Form 1120S because the service center's records showed that X was a C 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 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 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
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