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Internal Revenue Service

Department of the Treasury

Index Number: 1362.01.03

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:2-PLR-110892-99

Date: OCT - 7 1999

X =

A =

Date 1 =

Year 1 =

Dear :

This letter responds to your June 7, 1999 letter, submitted on behalf of X as X's authorized representative, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 of Year 1. A, the president of X, represents that the shareholders of X communicated their desire for X to be an S corporation to X's then attorney when X was incorporated. X and the attorney agreed that the attorney would file the S corporation election, but the attorney failed to file a Form 2553 (Election by a Small Business Corporation). X believed that Form 2553 had been filed by the attorney. After X filed a Form 1120S (U.S. Income Tax Return for an S Corporation) for Year 1, and A and the other shareholders of X filed their Forms 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation, the service center notified X that it did not have a Form 2553 on file for X and therefore could not process its Year 1 Form 1120S.

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

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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 Year 1, 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, we express no opinion 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 the power of attorney on file, a copy of this letter is being sent to X.

Sincerely yours

(signed) H. GRACE KIM

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