Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 1362.01-03

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:2 - PLR-111536-99

Date:
September 27, 1999

X =

A =

D1 =

D2 =

Year 1 =

Dear :

This letter responds to your letter dated June 15, 1999, and subsequent correspondence, 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. A, the president of X, represents that the shareholders of X intended that X be an S corporation. X's Articles of Incorporation evidence this intent. A represents also that X relied on its attorney to complete all necessary paperwork for X to be an S corporation, effective its Year 1 taxable year. However, X's attorney failed to prepare a Form 2553, Election by a Small Business Corporation. Therefore, no Form 2553 was timely filed for X effective for X's Year 1 taxable year. In a notice dated D2, X's Internal Revenue service center informed X that the service center had no record of X filing a Form 2553.

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

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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 forwarded to X's authorized representative.

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

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