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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-111533-99

Date: NOV - 9 1999

X =

A =

B =

D1 =

Year 1 =

Year 2 =

Dear :

This letter responds to a letter dated June 23, 1999, and subsequent correspondence, submitted 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, intended that X elect to be an S corporation beginning Year 1, its first taxable year. A, as X's president, represents that X relied on its attorney to file any necessary election in order for X to be an S corporation. X's minutes from its Board of Directors meeting indicate that X intended to be an S corporation beginning in Year 1. However, due to an oversight, a Form 2553, Election by a Small Business Corporation, was not timely filed for X's Year 1 taxable year. For Year 1 and Year 2, a Form 1120S, U.S. Income Tax Return for an S Corporation, was filed for X. A and B also filed their income tax returns for their Year 1 and Year 2 taxable years consistent with the treatment of X as 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 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's authorized representative.

Sincerely yours,

(signed) J. THOMAS HINES

J. THOMAS HINES
Acting Branch Chief,
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
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