Internal Revenue Service

Index Number: 1362.01-03

Department of the Treasury

200017049

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:2-PLR-116277-99

Date: JAN 24 2000

X =

Date 1 =

Year 1 =

Dear :

This letter responds to a September 22, 1999 letter that you, the authorized representative of X, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 of Year 1. The corporate minutes for X indicate that the shareholders of X intended X to be an S corporation beginning with X's Year 1 taxable year. It was the shareholders' understanding that the attorney who formed X would qualify X as an S corporation. The attorney believed that X's accountant was responsible for filing the Form 2553 (Election by a Small Business Corporation) for X. Believing that Form 2553 had been filed, X filed a Form 1120S (U.S. Income Tax Return for an S corporation) for Year 1 and the X shareholders filed their Year 1 Form 1040 (U.S. Individual Income Tax Return) consistent with X being an S corporation. However, the applicable service center informed X that it could not process X's Form 1120S because it did not have a record that a Form 2553 had been filed for X.

Section 1362(b)(5) of the Code provides that if-- (A) an election under § 1362(a) for any taxable year is made 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

267

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 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 a power of attorney on file, a copy of this letter is being sent to X.

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
Copy for § 6110 purposes