Internal Revenue Service

Department of the Treasury

Index Number: 1362.00-00

Washington, DC 20224

199908047

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:2-PLR-115125-98

Date:

NOV 23 1998

Dear :

This responds to a letter dated July 21, 1998, submitted by X's authorized representative on behalf of X, in which a ruling is requested under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1 of Year 1. X's corporate minutes dated D2 of Year 1 indicate that A, X's sole shareholder, intended to elect to treat X as an S corporation. A, as X's President, represents that X relied on its advisors to prepare the necessary documents to make an S corporation election to be effective for X's first taxable year, Year 1. However, a Form 2553, Election by a Small Business Corporation, was not filed for X.

Section 1362(b)(5) 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 its first taxable year, Year 1. 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. Additionally, this ruling is conditioned upon X and A filing all required federal income tax returns within 60 days following the date of this letter to report consistently with the treatment of X as an S corporation.

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 in this office a copy of this letter will be sent to X's authorized representative.

Sincerely yours,

(signed) J. THOMAS HINES

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

Enclosures:
Copy of this letter
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