Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index No.: 1362.00-00

Contact Person:

199909057

Telephone Number:

In Reference to:

CC:DOM:P&SI:2 - PLR-116923-98

Date: DEC 04 1998

X =

A =

B =

C =

D =

D1 =

D2 =

Year 1 =

Year 2 =

Dear

This responds to a letter dated August 25, 1998, and subsequent correspondence, submitted on behalf of X by X's authorized representative, 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. X did not have shareholders or assets and did not begin doing business until D2 of Year 2. The shareholders of X are A, B, C and D. A, as X's Chief Financial Officer, represents that X relied on its attorney to file the proper subchapter S election; however, Form 2553, Election by a Small Business Corporation, was not filed. The corporate minutes prepared for X, reflect the shareholders' intent to have X treated as an S corporation. X filed its tax return using Form 1120S and each shareholder of X filed their Form 1040 based on X being an S corporation for Year 2.

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 the Form 2553 with the appropriate service center effective for its Year 2 taxable year, within 60 days following the date of this letter, then such election will be treated as timely made for X's Year 2 taxable year. A copy of this letter should be attached to the Form 2553.

Except as specifically ruled upon above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions 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 with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

J. Thomas Hines

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

Enclosures: 2
Copy of this letter
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