Internal Revenue Service

Index No.: 1362.01-03

Department of the Treasury

Washington, DC 20224

199942043

Contact Person:

Telephone Number:

In Reference to:

CC:DOM:P&SI:2 - PLR-106456-99

Date: JUL 20 1999

X =

A =

B =

D1 =

D2 =

Year 1 =

Year 2 =

Dear

This responds to your letter dated March 17, 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 of Year 1. The information submitted indicates that X did not commence business until sometime in D2 of Year 2. The shareholders of X are A and B. A, as X's president, represents that it was the intent of X and the shareholders of X for X to be an S corporation from the date X was incorporated. A copy of the Form SS-4, Application for Employer Identification Number, prepared for X reflects the shareholders' intent to have X treated as an S corporation. A further represents that the shareholder of X believed that the appropriate Form 2553, Election by a Small Business Corporation, was properly executed and filed by X's attorney. However, the Service has no record of the Form 2553 being filed. For the Year 2 taxable year, X filed its tax return using Form 1120S, U.S. Income Tax Return for an S corporation. No tax return was filed for X for Year 1. The shareholders of X filed their returns based on X being an S corporation.

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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 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.

Sincerely yours,

(Signed) 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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