Internal Revenue Service

Index No.: 1362.00-00

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

199911052

In Reference to:

CC:DOM:P&SI:2 - PLR-116356-98

Date:

18DEC98

X =

A =

B =

C =

D =

E =

F =

G =

H =

I =

U =

D1 =

D2 =

D3 =

Year 1 =

Year 2 =

Year 3 =

Dear :

This responds to a letter dated July 21, 1998, 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, but until D2 of Year 2, X had no shareholders, no assets, and no operations. The shareholders of X are A, B, C, D, E, F, G, H, and I. U, as X's Assistant Secretary, represents that although it was the intent of X and the shareholders of X for X to be an S corporation beginning with Year 2, its first taxable year, as reflected in the resolution adopted at the first meeting of X's Board of Directors, a Form 2553, Election by a Small Business Corporation, was not filed by legal counsel for X for Year 2. U represents that X had no items of income, loss, deduction, or credit for Year 2. A Form 2553 for X was filed on D3 of Year 3, effective for that year.

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, Year 2. Accordingly, provided that X makes an election to be an S corporation by filing a 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 representatives.

Sincerely yours,

(signed) H. GRACE KIM

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
Copy for section 6110 purposes