Internal Revenue Service

Department of the Treasury

Legend

Corporation   =

Shareholder 1   =

Shareholder 2   =

State   =

Date 1   =

Date 2   =

Year 1   =

Year 2   =

Dear   :

This letter responds to your letter dated May 15, 2003, and subsequent correspondence, written on behalf of Corporation as its authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

Facts

According to the information submitted, Corporation was incorporated in State on Date 1. It is represented that Corporation did not issue any stock, did not own any assets, and did not conduct any business prior to Date 2. Corporation's sole shareholder, Shareholder 1, intended to file a Form 2553, Election by a Small Business Corporation, for Corporation effective for Year 1, its first taxable year beginning Date 2. The Internal Revenue Service has no record of receiving the Form 2553, and

Corporation is unable to provide evidence of the Internal Revenue Service having received the form.

Corporation and Shareholder 1 filed their federal income tax returns for Year 1 consistent with the treatment of Corporation as an S corporation. Corporation, Shareholder 1, and Shareholder 2, who acquired stock in Corporation in Year 2, filed their federal income tax returns for Year 2 consistent with the treatment of Corporation as an S corporation.

<u>Applicable Law</u>

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides when an S election will be effective. Generally, if an election to be treated as an S corporation is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Section 1362(b)(3) provides that if an S election is made after the fifteenth day of the third month of a corporation's taxable year, then the corporation will not be treated as an S corporation until the taxable year following the year the S election is made.

Section 1362(b)(5) provides that if an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election or no election is made for any taxable year, and the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such election as timely made for such taxable year and § 1362(b)(3) shall not apply.

<u>Conclusion</u>

Based on the facts submitted and representations made, we conclude that Corporation has established reasonable cause for failing to make a timely S election pursuant to § 1362(b)(5). Accordingly, provided Corporation makes an election to be treated as an S corporation for federal tax purposes by filing a completed Form 2553, containing an effective date of Date 2 for the election, with the appropriate Service Center within 60 days following the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553 filed with the Service Center.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion concerning whether Corporation otherwise is eligible to be an S corporation for federal tax purposes.

PLR-132967-03

       Pursuant to a power of attorney on file with this office, we are sending copies of this letter to Corporation's authorized representatives.

       This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely yours,

/s/
James A. Quinn
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):
       Copy of this letter
       Copy for § 6110 purposes
cc: