

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Refer Reply To:

CC:PSI:B1-GENIN-150832-01

Date:

June 24 2002

[REDACTED]:

This responds to your letter of August 13, 2001, in which you requested that we "reinstate" [REDACTED] election to be treated as an S corporation for federal tax purposes. Unfortunately, we are unable to reinstate [REDACTED] election to be an S corporation unless the taxpayer submits a formal private letter ruling request. For a statement of the issues treated in private letter rulings, and the procedures for filing such a ruling, please refer to Revenue Procedure 2002-1. To obtain a copy of Revenue Procedure 2002-1, please call (202) 622-7560.

The Internal Revenue Code provides that an election to be an S corporation is terminated whenever the corporation ceases to be a "small business corporation." Section 1362(d)(2). Under certain circumstances the Secretary will treat an S corporation, which inadvertently terminated, as continuing. Section 1362(f). The determination of whether an S corporation was inadvertently terminated is made by the Commissioner. Under the Income Tax Regulations, the corporation has the burden of establishing that the Commissioner should determine that the termination was inadvertent. Section 1.1362-4(b).

To request inadvertent termination relief the corporation should submit a ruling request, setting forth all relevant facts pertaining to the event, including the date of the corporation's election under section 1362(a), a detailed explanation of the event causing termination, when and how the event was discovered, and the steps taken to return the corporation to small business corporation status. Section 1.1362-4(c) The corporation and all persons who were shareholders of the corporation at any time during the relevant period must sign a statement agreeing to make any adjustments the Commissioner may require. Section 1.1362-4(d).

Absent a private letter ruling determining that the S corporation termination was inadvertent, the corporation (and any successor corporation) will not be eligible to make another S corporation election for 5 years following the tax year in the S corporation election terminated, without obtaining consent from the Secretary. I.R.C. Section 1362(g); Income Tax Reg. Section 1.1362-5.

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We hope that this information is helpful to you. If you have additional questions, please contact at (202) 622-3050.

Sincerely,

/s/ Dianna K. Miosi

Dianna K. Miosi
Branch Chief, Branch 1
(Passthroughs & Special Industries)