

Internal Revenue Service

Number: **INFO 2004-0151**

Release Date: 9/30/04

Index Number: 1362.02-01

Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B1 – GENIN-128293-04

Date:

Aug 20 2004

Taxpayer = [REDACTED]

Dear [REDACTED]:

This responds to your letter of March 11, 2004 in which you requested that we rescind taxpayer's recent revocation of its election to be an S corporation.

Section 1362(d)(1)(A) of the Internal Revenue Code states that an election to be an S corporation for federal tax purposes may be terminated by revocation. Section 1.1362-6(a)(3)(i) provides that revocation occurs when a corporation files a statement that it revokes its election to be an S corporation with the service center where the election was originally filed.

Under § 1.1362-2(a)(2) a revocation made before the 16th day of the third month of the taxable year is effective on the first day of the taxable year and revocation made after the 15th day of the third month of the taxable year is effective for the following tax year.

There are no provisions in the Internal Revenue Code authorizing the rescission of a timely filed revocation of an S corporation election. If you believe that before the intended effective date of the revocation you provided the service center with notice that you intended not to revoke your S corporation election, a certified mail receipt dated prior to the stated effective date of the revocation or a letter from the service center indicating that they received such correspondence prior to the stated effective date of the revocation is sufficient proof.

Under § 1362(g), a small business corporation that revokes its S corporation election, or any successor to such a corporation, may not elect to be an S corporation

for any taxable year before its fifth taxable year beginning after the year for which the revocation was effective without obtaining the permission of the Secretary.

Section 1.1362-5(a) provides that the corporation has the burden of establishing that under the relevant facts and circumstances consent should be granted for a new S corporation election. The fact that more than 50 percent of the stock of the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact consent ordinarily is denied unless the corporation can show that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

The Secretary's permission is obtained in the form of a letter ruling. The procedures for requesting a private letter ruling are set out in Revenue Procedure 2004-1 (copy enclosed). In addition, Rev. Proc. 2004-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$6,000. However, taxpayers with gross income of less than \$1 million on their tax return for the most recent 12-month taxable year, qualify for a **reduced user fee** in the amount of \$500. If you qualify for the reduced fee, you must include a statement certifying your gross income for the last 12-month taxable year. Otherwise, the higher fee will apply.

If you decide to submit a formal request for a private letter ruling, please review Appendix B of Rev. Proc. 2004-1 and be certain to include all required procedural statements. Also include the proper user fee and any documents that substantiate your intent to be an S corporation from inception. Please refer your request to our office by adding the following to the address:

Attn: CC:PA:LPD:DU
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:PSI:1
Room 5002

We hope that this information is helpful to you. If you have additional questions, please contact _____ at _____.

Sincerely,
/s/ Dianna K Miosi
Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure (1)
Rev. Proc. 2004-1