

INTERNAL REVENUE SERVICE

Number: **2001-0040**

Release Date: 3/30/2001

[REDACTED]
[REDACTED]
CC:PSI:1-COR-130089-00

January 12, 2001

UILC 1361.02-01

[REDACTED]:

We are responding to correspondence, submitted on your behalf by [REDACTED] [REDACTED] CPA, requesting relief in order to rescind the revocation of your S corporation election effective January 1, 1998. Although we are unable to respond to your request as submitted, this letter provides useful information relating to your request.

Section 1.1362-5 of the Income Tax Regulations explains that absent the Commissioner's consent, an S corporation whose election has terminated (in your situation, the election was terminated by an affirmative request for revocation) may not make a new election under §1362(a) of the Internal Revenue Code for five taxable years as described §1362(g). However, the Commissioner may permit the corporation to make a new election before the five-year period expires. The corporation has the burden of establishing that under the relevant facts and circumstances, that the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of termination tends to establish that fact, consent should be granted. In the absence of this fact, consent ordinarily is denied *unless* the corporation shows 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.

In order for us to consider your request, it must be submitted in accordance with the procedures for requesting a private letter ruling which are set out in Revenue Procedure 2000-1 (copy enclosed). In addition, Rev. Proc. 2000-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$5,000. However, taxpayers with gross income of less than \$1 million on their last-filed tax return qualify for a **reduced user fee** in the amount of \$500. If you

are eligible to use the reduced fee provision you must include the statement described in § (B)(1)(b) of Appendix A with your request. Please review Appendix B for a sample format for requesting a private letter ruling.

If you decide to submit a formal request for a private letter ruling, please include the proper user fee (if applying under the reduced fee provisions, send a statement certifying gross income) and refer your request to our office by adding the following to the address:

Attn: CC:P&A
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:PSI:1
Room 5002

Please keep this letter with your tax records and feel free to provide a copy of it to your authorized representative. We hope that the above information proves helpful.

Sincerely yours,

/s/Dianna K. Miosi
DIANNA K. MIOSI
Chief, Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Rev. Proc. 2000-1