

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **INFO 2004-0153**

Release Date: 9/30/04

Index Number: 1362.01-03

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B1 – GENIN-128295-04

Date:

Aug 20 2004

Taxpayer = [REDACTED]

Dear [REDACTED]:

This responds to your letter dated May 3, 2004 in which it was requested that we recognize Taxpayer's election to be an S corporation effective for the 2001 tax year.

A corporation, which meets the definition of a small business corporation under section 1362(a) of the Internal Revenue Code, may elect to be treated as an S corporation. In order for an S corporation election to be effective for the taxable year in which it is made, it must be made within the first two and one-half months of the corporation's taxable year. Section 1362(b)(2). If an S election is made after that time, then the corporation will not be treated as an S corporation until the taxable year following the one in which the S election was filed. Section 1362(b)(3). An election made after the first two and one-half months of the taxable year in which it is intended to be effective may be treated as effective if the Secretary determines that there was reasonable cause for the corporation's failure to make a timely election. Section 1362(b)(5).

Unfortunately, you do not qualify for relief under the provisions of Rev. Proc. 97-48, 1997-2 C.B. 521. Rev. Proc. 97-48 applies to late S corporation elections for entities who intend to be an S corporation, the corporation and its shareholders reported their income consistent with S corporation status for the taxable year the S corporation election should have been made and for every subsequent year, and the corporation did not receive notification from the Service regarding any problem with the S corporation status within six months of the date on which the Form 1120S for the first year was timely filed. The service center's records indicate that a letter notifying you that there was a problem with your S corporation election was sent within six months of the date on which Form 1120S for the first year was filed.

Announcement 97-4 (copy enclosed) provides guidance on seeking relief for late S corporation elections. Generally, to request relief for a late S corporation election you

must request a private letter ruling from the National Office. 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 _____ (not a toll-free call).

Sincerely,

/s/ Dianna K Miosi

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

Enclosures (2)
Announcement 97-4
Rev. Proc. 2004-1