

Internal Revenue Service

Number: **INFO 2004-0219**

Release Date: 12/31/04

Index Number: 1362.01-03

Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No. 50-21362

Telephone Number:

Refer Reply To:

CC:PSI:B1 – GENIN-151277-04

Date:

Nov 18 2004

Taxpayer = XXXXXXXXXX

Dear Taxpayer:

This responds to your letter dated September 1, 2004 in which it was requested that we recognize Taxpayer's election to be an S corporation effective January 1, 2004.

The information submitted explains that the corporation submitted a valid revocation of its S election to the IRS service center effective June 30, 2002. Although we are unable to respond to your request as submitted, this letter provides useful information relating to your request.

The law provides if an S corporation election has been terminated, the corporation is not eligible to make another S corporation election for any taxable year before its fifth taxable year that begins after the first taxable year for which the termination is effective, unless the Secretary consents to the election. Section 1362(g).

The regulations provide the Commissioner may permit a corporation to make a new election before the 5-year period expires. Reg. § 1.1362-5(a). The corporation has the burden of establishing that, under the relevant facts and circumstances, 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 the termination tends to establish that consent should be granted.

Permission to elect to be an S corporation before the expiration of the 5-year period must be done through 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:T
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)

Enclosure (1)
Rev. Proc. 2004-1