

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

GENIN-151260-04

Date:

January 24, 2005

Dear [REDACTED]:

This responds to a letter dated June 18, 2004 submitted by your representative in which it was requested that we recognize your 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, we cannot grant relief under Rev. Proc. 2003-43 because the original due date of the Taxpayer's S election was October 1, 2001, and therefore more than 24 months had passed since the original due date of the election and the time the Taxpayer filed its request for relief (June 18, 2004). In addition, relief cannot be granted under Rev. Proc. 97-48 because our records indicate that the tax return for the first year it was intended that Taxpayer be an S corporation was not timely filed. In addition, our records indicate that a Form 2553 has not been filed on the Taxpayer's behalf.

Relief for your late S corporation may be obtained through a letter ruling. 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 2005-1 (copy

enclosed). In addition, Rev. Proc. 2005-1 requires taxpayers to submit a user fee along with their ruling request. If the Taxpayer's ruling request is postmarked before March 1, 2005, the standard user fee for a private letter ruling is \$6,000. If the Taxpayer's ruling request is postmarked after March 1, 2005, the standard user fee for a private letter ruling is \$ 7,000.

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 the request is postmarked before March 1, 2005, or in the amount of \$625 if the request is postmarked after March 1, 2005. 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. 2005-1 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
Rev. Proc. 2005-1