

INTERNAL REVENUE SERVICE

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CC:DOM:P&SI:1-COR-104684-00

May 1, 2000

UILC 1372.03-00

We are responding to your correspondence, referencing three clients, requesting reinstatement of their S corporation status. The information submitted explains the taxpayers filed revocation statements on March 15, 1999, which terminated their S corporation elections effective as of January 1999. The taxpayers now wish to negate their actions and re-elect S status retroactively to the time of termination. Although we are unable to respond to your request in its current form, we are furnishing the following general 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 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, 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 to request relief for a re-election within the prohibited five-year period, taxpayers must request a private letter ruling from the National Office pursuant to the procedures set forth 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 eligible to use the reduced fee provision, the

statement described in § (B)(1)(b) of Appendix A must be included with your request. Please review Appendix B of Rev. Proc. 2000-1 for a sample format for requesting a private letter ruling.

If you decide to submit a formal request for a private letter ruling, please explain exactly how your clients meet the provisions of § 1.1362-5, provide supporting documentation, and include the proper user fee. Please refer your request to our office by adding the following to the address:

Attn: CC:DOM:CORP:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:DOM:P&SI:Br.1
Room 5002

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

Sincerely yours,
Signed/Dianna K. Miosi

DIANNA K. MIOSI
Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure:
Rev. Proc. 2000-1