

INTERNAL REVENUE SERVICE

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July 19, 2000

UILC 1362.01-02

██████████:

We are responding to correspondence, submitted on your behalf by ██████████ ██████████ ██████████ requesting to re-electing S corporation status. The information submitted indicates that a former shareholders had become a non-citizen of the United States, resulting in termination of S corporation status effective December 31, 1997. The non-citizen ceased to be a shareholder beginning in 1999. We are furnishing the following general information relating to your request.

Section 1362(f) applies to inadvertent termination relief in situations where an election by a corporation to be treated as a small business corporation was invalid due to a failure to meet the requirements of an S corporation found in § 1361(b). Generally, in order to obtain relief for inadvertent invalid elections, the corporation must request a private letter ruling from the IRS. Sections 1.1362-4(c) through (f) of the Income Tax Regulations provide rules for corporations requesting inadvertent termination relief under § 1362(f).

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. So, the five-year rule only applies when an election is affirmatively revoked,

not when the election was inadvertently terminated.

Based on the information submitted, it appears that relief will be available for the inadvertent termination of the S corporation under § 1362(f). You must request a private letter ruling to obtain this relief. If the request is approved, the S corporation status will be reinstated effective December 31, 1997.

The procedures for requesting a private letter ruling 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 feel you wish to submit a private letter ruling request, please include the proper user fee. You may refer your request to our office by adding the following to the address:

Attn: CC:CORP
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