

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01 COR-117130-01

Date:

May 29, 2001

[REDACTED]:
This responds to your March 16, 2001, letter concerning [REDACTED] subchapter S election.

From the information provided, I understand that [REDACTED] intended to be treated as a subchapter S corporation effective June 25, 1991. The subchapter S election (Form 2553), however, was not timely filed for the 1991 taxable year, and the Internal Revenue Service (Service) treated the election as made for the following taxable year (1992). You inquire as to whether relief is available at this time to treat the election as timely made for the 1991 year.

Generally, § 1362(b)(5) of the Internal Revenue Code (the Code) allows the Service to treat an untimely subchapter S election as timely if the Service determines that there was reasonable cause for the failure to timely make the election. Rev. Proc. 97-48, 1997-43 I.R.B. 19, and Rev. Proc. 98-55, 1998-46 I.R.B. 27, grant automatic relief under § 1362(b)(5) for certain late S corporation elections. For taxpayers not eligible for automatic relief under these revenue procedures, a private letter ruling request is necessary to obtain relief under § 1362(b)(5). However, the Service will not ordinarily issue a private letter ruling if the period of limitations on assessment under § 6501(a) has lapsed for any taxable year for which an election should have been made or any taxable year that would have been affected by the election had it been timely made.

As indicated in your letter, [REDACTED] does not appear to be eligible for automatic relief under either Rev. Proc. 97-48 or Rev. Proc. 98-55. In addition, the period of limitations on assessment under § 6501(a) has expired for the 1991 taxable year. As such, it is unlikely that relief would be granted if a private letter ruling request was submitted. I am unaware of any other provision or authority that would allow for relief under your circumstances.

CC:PSI:B01 COR-117130-00

If you have any further questions, please contact me or Shannon Cohen at (202) 622-3050.

Sincerely,

/s/Dianna K. Miosi

Dianna K. Miosi

Chief, Branch 1

Associate Chief Counsel

(Passthroughs and Special Industries)