

INTERNAL REVENUE SERVICE



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We are responding to correspondence, submitted to us on your behalf by the Cincinnati Service Center, requesting to rescind your revocation of S corporation status. The Internal Revenue Service processed your statement revoking S corporation status effective for January 1, 2001, as per your request, and confirmed such action by sending a Notice dated January 29, 2001.

The information submitted explains that on December 6, 2000, you sent a statement rescinding the S corporation revocation to the Internal Revenue Service. However, it appears that the only request to rescind the revocation was received by the Service Center on March 15, 2001. Under 1.1362-6(a)(4)(ii) of the Income Tax Regulations, if a rescission statement is filed before the revocation becomes effective and is filed with the proper service center, the rescission is effective on the date it is so filed. Because your rescission statement was received *after* January 1, 2001 (the effective date), it is invalid.

Generally, if the IRS questions whether the rescission statement was filed timely, acceptable proof is (a) certified or registered mail receipt; (b) your statement with stamped IRS received date; or (c) an IRS letter stating the rescission has been processed. If you can provide proof of mailing your rescission statement prior to January 1, 2001, then we may be able to assist you.

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.

As a courtesy, we have included a copy of Form 1120 and Instructions to Form 1120 as an introduction to the type of tax return you will be required to file until you can legitimately re-elect S corporation status (2006). You may locate further tax information by going to the IRS website at www.irs.gov which provides connections to forms, instructions, and publications, as well as valuable business links.

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)

Enclosures:

Form 1120
& Instructions