

INTERNAL REVENUE SERVICE

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June 5, 2001

UILC 1362.02-01

We are responding to your correspondence requesting relief in order to re-elect S corporation status effective for January 1, 2001. The information submitted explains that the taxpayer has had a change in ownership, but fails to describe the timing and nature of such transaction. On March 15, 2001, the Kansas City Service Center rejected your request to re-elect S corporation status because it lacked a sufficient explanation.

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.

If you think your situation meets the requirement set forth in § 1.1362-5, then please should send a statement describing your eligibility for automatic consent, along with your Form 2553, to:

Internal Revenue Service
Kansas City Service Center Entity
Kansas City, MO 64999.

If you fail to meet the 50% change-in-shareholder test, you must follow the private letter ruling process in order for the Service to consider granting relief. The procedures for requesting a private letter ruling are set out in Revenue Procedure 2001-1 (copy enclosed). In addition, Rev. Proc. 2001-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$6,000. 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 qualified to use the reduced fee provision you must include the statement describing your eligibility with your request. Please review Appendix B of Rev. Proc. 2001-1, for a sample format for requesting a private letter ruling.

If you decide to submit a formal request for a private letter ruling, please include the proper user fee and 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

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:

Announcement 97-4
Rev. Proc. 2001-1