

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Date:

October 18, 2001

Dear ■.■:

This responds to your letter dated September 13, 2001, and submitted on behalf of ■. In that letter you requested permission to revoke an election by ■ to be excluded from the application of subchapter K of chapter 1 of the Internal Revenue Code. We consider your request to be a request for a ruling.

While the Internal Revenue Service strives to be responsive to inquiries on federal tax issues, we cannot issue a ruling unless the taxpayer complies with our procedural requirements. These are set forth in Rev. Proc. 2001-1, 2001-1 I.R.B. 1. In addition, a user fee must accompany the ruling request in order for the request to be processed. The schedule of fees is set forth in Appendix A of Rev. Proc. 2001-1. Although we are unable to issue a ruling at this time, we are furnishing the following general information.

Section 761(a) of the Code provides that an unincorporated organization may elect to be excluded from the application of subchapter K. Section 1.761-2(b) of the Income Tax Regulations provides the time, manner, and effect of making the election.

Section 1.761-2(a)(1) of the regulations provides that in order to qualify for the election out of subchapter K, an organization must be availed of (i) for investment purposes only and not for the active conduct of a business, or (ii) for the joint production, extraction, or use of property but not for the purpose of selling services or property produced or extracted. The members of the organization must be able to compute their income without the necessity of computing partnership taxable income.

Under § 1.761-2(a)(2), an investing partnership may elect to be excluded from the application of subchapter K if the participants in the joint purchase, retention, sale,

or exchange of investment property (1) own the property as co-owners, (2) reserve the right separately to take or dispose of their shares of any property acquired or retained, and (3) do not actively conduct business or irrevocably authorize some person or persons acting in representative capacity to purchase, sell, or exchange such investment property, although each separate participant may delegate authority to purchase, sell, or exchange his share of any such investment property for the time being for his account, but not for a period of more than one year.

Section 1.761-2(b)(3) provides that, once properly made, an election is revocable only with the consent or approval of the Commissioner. However, if an organization which is qualified to make the election by reason of section 1.761-2(a)(2) begins the active conduct of a trade or business, it no longer qualifies to be excluded from subchapter K. Thus, the election expires when the organization begins to conduct business. At that time, the organization must begin complying with the requirements of subchapter K. Likewise, if an ineligible organization attempts to make the election out of subchapter K, the election is not valid, and permission to revoke the election is neither necessary nor available.

Generally, under the rules described above, most stock investment clubs are not eligible to make the election out of the application of subchapter K. Instead, such organizations are treated as partnerships, and all of the rules under §701 through §761 apply to them.

We hope that the above information proves helpful in answering any questions that you may have.

Sincerely,

Matthew Lay
Senior Technician Reviewer, Branch 2
Office of the Associate Chief Council
(Passthroughs and Special Industries)