

INTERNAL REVENUE SERVICE

Number: **INFO 2002-0011**

Release Date: 3/29/2002

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CC:PSI:1-GENIN-157607-01

Dec 17 2001

UILC 1362.00-00

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We are responding to your correspondence requesting relief in order to re-elect S corporation status effective as of January 1, 2001. The information submitted explains that you affirmatively revoked your S corporation status on September 1, 1997. Although we are unable to intervene on your behalf at this time, please read our letter carefully as it provides useful information relating to your request.

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 consent should be granted. In the absence of this fact (which appears to be your situation) 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.

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)