

**Internal Revenue Service**

Department of the Treasury

Number: **INFO 2002-0015**  
Release Date: 3/29/2002  
Index Number: 1362.01-02

Washington, DC 20224

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Refer Reply To:

CC:PSI:2-GENIN-153605-01

Date:

January 3, 2002

Dear Mr. [REDACTED]:

This responds to a letter dated September 20, 2001 and submitted on behalf of [REDACTED] by [REDACTED]. In that letter, [REDACTED] requested permission for [REDACTED] to reelect S corporation status within five years of the termination of [REDACTED] prior S election. We consider this 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, 2001-1 I.R.B. 1. Although we are unable to issue a ruling at this time, we are furnishing the following general information.

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 in §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, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or in control of shareholders having a substantial interest in the corporation, and that the event was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

We hope that the above information proves helpful in answering any questions that you may have. If you have any further questions, please contact [REDACTED] at [REDACTED].

Sincerely,

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