

INTERNAL REVENUE SERVICE

Number: **INFO 2002-0045**

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CC:PSI:1-GENIN-107386-02

March 1, 2002

UILC 1362.00-00

[REDACTED]:

We are responding to your correspondence requesting relief in order to revoke your S corporation election for an effective date of January 4, 1999. However, it appears that your statement revoking S corporation status was received by the Internal Revenue Service past the due date.

The Internal Revenue Code does not allow taxpayers to retroactively revoke an S corporation election. Rather, § 1362(d)(1)(D) of the Code provides that in order to terminate S corporation status by revocation, (1) a revocation made during the taxable year and on or before the 15th day of the 3rd month thereof shall be effective on the 1st day of such taxable year, and (2) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year. A revocation may specify a prospective date. If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective on and after the date so specified.

In your situation, the window period for effecting a revocation for January 1, 1999, had already closed when your statement was received. At this point, unless you can provide proof (e.g., certified mail postmark before March 15, 1999) of timely filing a statement revoking your election, you should file amended returns using Form 1120S.

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

Chief, Branch 1

Associate Chief Counsel

(Passthroughs and Special Industries)