

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

[Redacted]

Refer Reply To:

CC:PSI:B1-GENIN-143010-02

Date:

Aug 28 2002

Dear [Redacted]:

We are responding to your letter dated July 16, 2002, submitted on behalf of [Redacted], seeking to approval to make an S corporation election effective January 1, 2002. The information submitted explains that the corporation revoked its S election as of January 1, 2001. During the 2001 tax year, the corporation obtained new shareholders. These new shareholders infused additional capital into the corporation and desire it to be an S corporation. The corporation filed a form 2553 with the [Redacted] Service Center on March 15, 2002, but the election was rejected on the grounds that such election must be approved by the Commissioner. Although we are unable to respond to your request as submitted, this letter provides useful information relating to your request.

A corporation that revokes its election to be an S corporation is generally prohibited from making another election to be an S corporation for five years from the date of the termination without the consent of the Commissioner. Section 1362(g). A taxpayer may seek permission from the Commissioner to make a new election before the 5-year period expires. Reg. § 1.1362-5(a). The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own stock in the corporation at the time of the termination tends to establish that the Commissioner should grant consent. Reg. § 1.1362-5(a). If this is not the case, consent is ordinarily denied unless the corporation shows that the event causing termination was not reasonably in the control of the corporation or the shareholders having a substantial interest in the corporation and was not part of a plan to terminate the election. Reg. § 1.1362-5(a). If the corporation were to seek permission to make such an election it would be done by filing a private letter ruling request with the National Office as described below.

The procedures for requesting a private letter ruling are set out in Revenue Procedure 2002-1 (copy enclosed). In addition, Rev. Proc. 2002-1 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

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their last-filed tax return qualify for a reduced user fee in the amount of \$500. If you are eligible to use the reduced fee provision you must include the statement described in § (B)(1)(b) of Appendix A with your request. Please review Appendix B 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 (if applying under the reduced fee provisions, send a statement certifying gross income), and refer your request to our office by adding the following to the address:

Attn: CC:P&A
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:PSI:1
Room 5002

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Handel Information Technologies, Inc. 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:
Rev. Proc. 2002-1