

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01 – GENIN-138350-03

Date:

Feb 6 2004

Re:

Dear :

We are answering your correspondence requesting late QSST election relief for the above named taxpayer pursuant Rev. Proc. 98-55. Relief is not available for the taxpayer pursuant to Rev. Proc. 98-55 as well as under Rev. Proc. 2003-43. Rev. Proc. 98-55 is not applicable because the trust does not meet the requirements for eligibility found in Section 4.02. Furthermore, relief is also not available under Rev. Proc. 2003-43 due to the trust's failure to meet the eligibility requirements under Section 4.02. Although we are unable to respond to your request as submitted, this letter provides information relating to your request.

Section 1362 (a) of the Internal Revenue Code provides that a small business corporation can elect to be treated as an S corporation. Section 1361(b)(1) states that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have (A) more than 75 members, (B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock. Section 1361(c)(2)(A)(i) provides, in relevant part, that a trust all of which is treated as owned by an individual who is a citizen or resident of the United States is a trust that is permitted to be a shareholder of an S corporation.

Section 1361(d)(3) of the Code provides that the term "qualified subchapter S trust" means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there was only be one income beneficiary, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1361(d)(1) of the Code states that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) (allowing certain trusts to be eligible shareholders of an S corporation).

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Section 1362(d)(2) of the Code states that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) of the Code states that if: (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation is a small business corporation; (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

An official finding of an inadvertent termination, as well as permission to file a late QSST election are granted in private letter rulings. The information forwarded to our office is insufficient for us to process a private letter ruling request. The procedures for requesting a private letter ruling are set forth in Revenue Procedure 2003-1 (copy enclosed). In addition, taxpayers must 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 their tax return for the most recent 12-month taxable year, qualify for a **reduced user fee** in the amount of \$500. If you qualify for the reduced fee, you must include a statement claiming that your gross income for the last 12-month taxable year was less than one million dollars.

If you decide to submit a formal request for a private letter ruling, please follow the sample format provided in Appendix B of Rev. Proc. 2003-1. Your request should include all required procedural statements, a check for the user fee, and any documents that substantiate your intent to be an S corporation from inception. Please refer your request to our office by adding the following to the address:

Attn: CC:PA:T
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Direct to: CC:PSI:1
Room 5002

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)

Enclosures:
Rev. Proc. 2003-1