

**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-163354-03

Date:

Feb 6 2004

Re:

Dear [REDACTED]

We are answering correspondence, submitted by you, for the above named taxpayer with regard to revocation of an S election. Although we are unable to respond to your request as submitted, this letter provides information relating to your request.

According to the facts provided by you, the company captioned above currently has a valid S election. We believe you wish to revoke the company's S election by filing a revocation effective as of January 1, 2001.

Section 1362(d)(1) of the Internal Revenue Code provides that an election to be an S corporation under § 1362(a) may be terminated by revocation. This election may be revoked only if the shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation.

Under ' 1362(d)(1)(C), a revocation made during the taxable year and on or before the 15<sup>th</sup> day of the 3<sup>rd</sup> month thereof shall be effective on the 1<sup>st</sup> date of such taxable year, and a revocation made during the taxable year but after such 15<sup>th</sup> day shall be effective on the 1<sup>st</sup> day of the following taxable year.

Under ' 1362(d)(1)(D), 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. More specifically under ' 1.1362-2(b)(2)(ii) of the Income Tax Regulations, if a corporation specifies a date for revocation and the date is expressed in terms of a stated day, month, and year that is on or after the date the revocation is filed, the revocation is effective on or after the date so specified.

Thus, a revocation of an election to be treated as an S corporation cannot be made retroactively. If a taxpayer believes that he/she has previously revoked their S status, proof of a timely filed revocation must be presented to the appropriate service center. In the case of a revocation to be effective January 1, 2001, the revocation must have been postmarked by

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March 15, 2001, at the latest. If no proof can be provided, there cannot be a revocation of the S election retroactively and the taxpayer will continue to be treated as an S corporation until a timely filed revocation is filed for the next available tax year. Relief through the private letter ruling process is not available for an earlier date.

Please keep this letter with your tax records. 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)