

Internal Revenue Service

Number: **INFO 2004-0181**

Release Date: 12/31/04

Index Number: 1362.00-00

Department of the Treasury

Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01 –GENIN-105621-04

Date:

August 30, 2004

Dear [REDACTED]

This letter is in response to your written request, postmarked January 15, 2004, seeking a retroactive late S corporation election back to September 1, 1999, pursuant to Rev. Proc. 97-48.

In order to qualify for automatic relief under Rev. Proc. 97-48, a taxpayer can receive relief if, after filing an S corporation return, Form 1120S, the taxpayer does not receive notification of the lack of a valid S election within six months of the timely filing of the return. However, our records indicate that no returns were filed for this entity until the year 2003 and a letter notifying you that there was no valid S election on file was sent to you on December 15, 2003. Thus, you are not eligible for relief under the provisions of Rev. Proc. 97-48.

Section 1362(a) of the Internal Revenue Code provides that a small business corporation can elect to be treated as an S corporation. Section 1362(b) of the Code provides guidance on when the S election becomes effective. If an S election is made within the first two and one-half months of a corporation's taxable year, then that corporation will be treated as an S corporation for the year in which the election was made. If the corporation makes an election after the first two and one-half months of a corporation's taxable year, then the corporation will generally not be treated as an S corporation until the following taxable year.

Section 1362(b)(5) of the Code provides that if no election is made pursuant to section 1362(a), or if the election is made after the date prescribed for making such an election, and the Secretary determined reasonable cause existed for the failure to timely make the election, then the Secretary can treat such an election as being timely made for that taxable year and effective as of the first day of that taxable year. The Secretary will grant relief under section 1362(b)(5) only upon receipt and evaluation of a private letter ruling request.

GENIN-105621-04

As stated above, in order to receive relief to file a late S corporation election (Form 2553), the taxpayer must submit a valid and complete request for private letter ruling. The procedure for submitting such a request is outlined in Revenue Procedure 2004-01. For your convenience, we have included a copy of the Revenue Procedure with this letter.

Please note that there is a filing fee required, if you decide to seek a private letter ruling (see Appendix A of Rev. Proc. 2004-01, which is tabbed for your convenience). Appendix B provides a sample letter ruling format which should be followed. It contains a complete ruling request with descriptions of what is required. Finally, Appendix C is a required checklist that should be filled out and submitted with your private letter ruling request to ensure its completeness.

We appreciate this opportunity to provide you with assistance. If you have further questions, please contact us at (202) 622-3050 (not a toll free number).

Sincerely,

/s/ Dianna K Miosi

Dianna K. Miosi
Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Attachment:
Rev. Proc. 2004-1