

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
GENIN-124568-05

Date:
June 22, 2005

Taxpayer = [REDACTED]

Dear [REDACTED]:

This responds to a letter dated March 31, 2005, submitted on behalf of the Taxpayer, requesting that the Internal Revenue Service recognize the Taxpayer's election to be an S corporation.

Section 1361(a)(1) of the Internal Revenue Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for that year. Section 1362(b)(1) provides that a corporation may make an election to be treated as an S corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.

Section 301.7701-2(a) of the Procedure and Administration Regulations define a "business entity" as any entity recognized for federal tax purposes that is not properly classified under § 301.7701-4 or otherwise subject to special treatment under the Code. Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1) or (3) through (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. Section 301.7701-3(b)(1) provides generally that unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner. Section 301.7701-3(c)(1) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing Form 8832 with the service center designated on such form. Section 301.7701-3(c)(iii) provides that the entity classification election will be effective on the date specified by the entity on the Form 8832 or on the date filed if no date is specified on the election form. The effective date

specified on Form 8832 cannot be more than 75 days before or more than 12 months after the date the election is filed.

Accordingly, an eligible entity that seeks to be classified as a subchapter S corporation must elect to be classified as an association under § 301.7701-3(c)(1)(i) by filing Form 8832 and must elect to be an S corporation under § 1362 by filing Form 2553. Our records indicate that you have not filed either form.

Fortunately, however, relief for your late S corporation and Entity Classification elections is available under Revenue Procedure 2004-48. In order to obtain the relief provided by this revenue procedure, you should do the following:

- File a properly completed Form 2553 with the IRS Service Center in Ogden, Utah no later than September 15, 2005.
- The Form 2553 you file should state at the top of the document "FILED PURSUANT TO REV. PROC. 2004-48."
- Attached to the Form 2553 must be a statement explaining the reason for the failure to file timely the S corporation election and a statement explaining the reason for the failure to file timely the entity classification election.

We hope that this information is helpful to you. If you have additional questions, please contact _____ at _____ (not a toll-free call).

Sincerely,

/s/ Dianna K. Miosi

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

Enclosures (1)
Rev. Proc. 2004-48