



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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Taxpayer =

Dear :

This letter responds to your request for information dated July 30, 2010, in which you asked whether the Taxpayer may revoke its S corporation election effective

In general, a corporation which meets the definition of a small business corporation under section 1361(a) of the Internal Revenue Code (the "Code") may elect to be treated as an S corporation. Section 1362(a). Once an S corporation election is made, it is effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, until such election is revoked or terminated under section 1362(d). Section 1362(c).

An S corporation election may be revoked only if 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. Section 1362(d)(1)(B). A revocation made during the taxable year and on or before the 15th day of the third month shall be effective on the first day of such taxable year. Section 1362(d)(1)(C)(i). A revocation made during the taxable year but after such 15th day shall be effective on the first day of the following tax year. Section 1362(d)(1)(C)(ii). 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 or after the date so specified. Section 1362(d)(1)(D).

To revoke an S corporation election, the corporation files a statement that it is revoking the election under § 1362(a). This statement must be filed with the service center where the S corporation election was properly filed. The revocation statement must include the number of shares of stock (including non-voting stock) issued and outstanding at the time the revocation is made. In addition, the revocation statement must be accompanied by the consent of shareholders holding more than one-half of the

issued and outstanding shares of stock. A shareholder consent must be in the form of a written statement that sets forth the name, address, and taxpayer identification number of the shareholder, the number of shares of stock owned by the shareholder, the date (or dates) on which the stock was acquired, the date on which the shareholder's tax year ends, the name of the S corporation, the corporation's taxpayer identification number, and that the shareholder consents to the revocation. This statement must be signed by the shareholder under penalties of perjury. Section 1.1362-6 of the Income Tax Regulations.

According to your letter, the Taxpayer completed and filed Form 2553, Election by a Small Business Corporation, for tax year on the advice of a former accountant. The Taxpayer filed Form 1120, U.S. Corporation Income Tax Return, for tax years and as if no S corporation election had been made. The Taxpayer now wishes to revoke its S corporation election effective as of .

Based solely on the facts as stated in your letter, it appears the Taxpayer did not properly revoke its S corporation election on or before the 15th day of the third month of tax year or tax year . By filing Form 2553, a corporation makes the election to be treated as an S corporation. The S corporation election remains in effect until it is properly revoked or otherwise terminated. As a general matter, a corporation may not revoke an S corporation election for prior tax years, as no provision exists within the Code allowing late revocations of S corporation elections.

Please note that if the Taxpayer wishes to revoke its S corporation election effective for tax year 2011, the revocation must be filed with the Internal Revenue Service by the 15th day of the third month after the beginning of the tax year. For example, in the case of a calendar-year taxpayer (with tax years ending on December 31), the revocation must be filed by March 15, 2011, to be effective for tax year 2011.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2010-1, §2.04, 2010-1 IRB 7 (January 4, 2010). If you have any additional questions, please contact our office at .

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)