

**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-165671-04

Date:  
March 03, 2005

Taxpayer = [REDACTED]

Dear [REDACTED]:

This responds to your letter, dated December 10, 2004, in which it was requested that we recognize the Taxpayer's S election effective January 1, 2005.

Section 1362(g) of the Internal Revenue Code provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

Section 1.1362-5(a) of the Income Tax Regulations provides guidance as to when corporations will be permitted to make a new election before the 5-year period expires. The corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Based upon the information submitted, Taxpayer's S election terminated in

Accordingly, the Taxpayer is not eligible to reelect S status until [REDACTED], unless the Secretary consents to an election made before that time. The Taxpayer's S election terminated due to the entry of an ineligible shareholder, an event which is reasonably within the control of the corporation and shareholders and which was part of a plan on

the part of the corporation to terminate the Taxpayer's S election. Pursuant to § 1.1362-5(a), consent is ordinarily denied in this type of situation. If, however, the Taxpayer still wishes to seek the Commissioner's consent to elect S status before the 5 year period has expired, the Taxpayer must submit a private letter ruling request.

The procedures for requesting a private letter ruling are set out in Rev. Proc. 2005-1 (copy enclosed). In addition, Rev. Proc. 2005-1 requires taxpayers to submit a user fee along with their ruling request. The standard user fee for a private letter ruling is \$ 7,000.

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 \$625. If you qualify for the reduced fee, you must include a statement certifying your gross income for the last 12-month taxable year. Otherwise, the higher fee will apply.

If you decide to submit a formal request for a private letter ruling, please review Appendix B of Rev. Proc. 2005-1 and be certain to include all required procedural statements. Also include the proper 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

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)

Enclosure  
Rev. Proc. 2005-1