

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **INFO 2009-0058**

Release Date: 3/27/2009

Index Number: 1362.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01 –GENIN-140693-08

Date:

MARCH 4, 2009

Dear _____ :

This letter is in response to your written request, dated August 21, 2008, seeking retroactive late S corporation election relief back to 2004.

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.

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 2009-01, a publicly available document.

Please note that there is a filing fee required, if you decide to seek a private letter ruling (see Appendix A of Rev. Proc. 2009-01). Appendix B provides a sample letter ruling format which should be followed. It contains a complete ruling request with

GENIN-140693-08

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 () (not a toll free number).

Sincerely,

Dianna K. Miosi

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