

**§ 1.1362-1**

**26 CFR Ch. I (4-1-04 Edition)**

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**§ 1.1362-1 Election to be an S corporation.**

(a) *In general.* Except as provided in § 1.1362-5, a small business corporation as defined in section 1361 may elect to be an S corporation under section 1362(a). An election may be made only with the consent of all of the shareholders of the corporation at the time of the election. See § 1.1362-6(a) for rules concerning the time and manner of making this election.

(b) *Years for which election is effective.* An election under section 1362(a) is effective for the entire taxable year of the corporation for which it is made

and for all succeeding taxable years of the corporation, until the election is terminated.

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**§ 1.1362-2 Termination of election.**

(a) *Termination by revocation*—(1) *In general.* An election made under section 1362(a) is terminated if the corporation revokes the election for any taxable year of the corporation for which the election is effective, including the first taxable year. A revocation may be made only with the consent of shareholders who, at the time the revocation is made, hold more than one-half of the number of issued and outstanding shares of stock (including non-voting stock) of the corporation. See § 1.1362-6(a) for rules concerning the time and manner of revoking an election made under section 1362(a).

(2) *When effective*—(i) *In general.* Except as provided in paragraph (a)(2)(ii) of this section, a revocation made during the taxable year and before the 16th day of the third month of the taxable year is effective on the first day of the taxable year and a revocation made after the 15th day of the third month of the taxable year is effective for the following taxable year. If a corporation makes an election to be an S corporation that is to be effective beginning with the next taxable year and revokes its election on or before the first day of the next taxable year, the corporation is deemed to have revoked its election on the first day of the next taxable year.

(ii) *Revocations specifying a prospective revocation date.* If a corporation specifies a date for revocation and the date is expressed in terms of a stated day, month, and year that is on or after the date the revocation is filed, the revocation is effective on and after the date so specified.

(3) *Effect on taxable year of corporation.* In the case of a corporation that revokes its election to be an S corporation effective on the first day of the first taxable year for which its election is to be effective, any statement made with the election regarding a change in the corporation's taxable year has no effect.

(4) *Rescission of a revocation.* A corporation may rescind a revocation

made under paragraph (a)(2) of this section at any time before the revocation becomes effective. A rescission may be made only with the consent of each person who consented to the revocation and by each person who became a shareholder of the corporation within the period beginning on the first day after the date the revocation was made and ending on the date on which the rescission is made. See § 1.1362-6(a) for rules concerning the time and manner of rescinding a revocation.

(b) *Termination by reason of corporation ceasing to be a small business corporation*—(1) *In general.* If a corporation ceases to be a small business corporation, as defined in section 1361(b), at any time on or after the first day of the first taxable year for which its election under section 1362(a) is effective, the election terminates. In the event of a termination under this paragraph (b)(1), the corporation should attach to its return for the taxable year in which the termination occurs a notification that a termination has occurred and the date of the termination.

(2) *When effective.* If an election terminates because of a specific event that causes the corporation to fail to meet the definition of a small business corporation, the termination is effective as of the date on which the event occurs. If a corporation makes an election to be an S corporation that is effective beginning with the following taxable year and is not a small business corporation on the first day of that following taxable year, the election is treated as having terminated on that first day. If a corporation is a small business corporation on the first day of the taxable year for which its election is effective, its election does not terminate even if the corporation was not a small business corporation during all or part of the period beginning after the date the election was made and ending before the first day of the taxable year for which the election is effective.

(3) *Effect on taxable year of corporation.* In the case of a corporation that fails to meet the definition of a small business corporation on the first day of the first taxable year for which its election to be an S corporation is to be effective, any statement made with the