

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B1 – GENIN-151258-04

Date:

Nov 9 2004

Taxpayer = 

This responds to a letter dated August 12, 2004 submitted by your representative in which it was requested that we recognize Taxpayer's election to be an S corporation effective for the 2002 tax year.

A corporation, which meets the definition of a small business corporation under section 1362(a) of the Internal Revenue Code, may elect to be treated as an S corporation. In order for an S corporation election to be effective for the taxable year in which it is made, it must be made within the first two and one-half months of the corporation's taxable year. Section 1362(b)(2). If an S election is made after that time, then the corporation will not be treated as an S corporation until the taxable year following the one in which the S election was filed. Section 1362(b)(3). An election made after the first two and one-half months of the taxable year in which it is intended to be effective may be treated as effective if the Secretary determines that there was reasonable cause for the corporation's failure to make a timely election. Section 1362(b)(5).

As was noted in the letter, the Taxpayer is eligible for the relief granted within Rev. Proc. 2003-43. However, the letter sent on Taxpayer's behalf does not conform to the requirements specified within that Rev. Proc. You should ensure to take the steps to satisfy Rev. Proc. 2003-43:

- Form 2553 should be filed with the Cincinnati Service Center by December 25, 2004.
- The statement "Filed Pursuant to Rev. Proc. 2003-43" should appear at the top of the filed Form 2553.
- A statement establishing reasonable cause for the failure to timely file Form 2553 should be attached to the filed Form 2553.
- The filed Form 2553 must be signed by an officer (e.g. the president) and by all persons who were shareholders at any time during the period that began on the first day of the taxable year for which the election is to be effective.

- Statements from all shareholders during the period between the date the S corporation election was to have become effective and the date the completed election was filed providing that they have reported their income (on all affected returns) consistent with the S corporation election for the year the election should have been made and for all subsequent years must be attached to the filed Form 2553.
- Attached to the filed Form 2553 must be a dated declaration signed by an officer of the corporation authorized to sign which states "Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete."

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. 2003-43