INTERNAL REVENUE SERVICE
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February 3, 1999

Taxpayer =

A =

B =

C =

D =

E =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

Dear :

This letter responds to a September 30, 1998 ruling request and subsequent correspondence submitted on behalf of Taxpayer concerning § 1362(g) of the Internal Revenue Code.

The information submitted states that Taxpayer elected to be an S corporation effective for its taxable year beginning Date 1. On Date 3, Taxpayer revoked its S corporation election effective as of Date 2. At the time of the revocation, A owned 25.5

percent, B owned 25.5 percent, C owned 25.5 percent, and other eligible shareholders owned 23.5 percent of the stock of Taxpayer. Currently, A, B, and C each own 7.67 percent, and D owns 77 percent of the stock of Taxpayer. D did not own any shares of stock in Taxpayer when Taxpayer revoked its S election. During Year and prior to Date 4, Taxpayer had two classes of stock. Effective Date 4, Taxpayer has only one class of stock. E, as Taxpayer's Executive Vice-President, represents that as of Date 5, Taxpayer meets the criteria of a small business corporation under § 1361(b)(1).

Taxpayer is requesting permission to reelect to be an S corporation effective Date 5, prior to the termination of the five-year waiting period imposed by § 1362(g) of the Code.

Section 1362(g) of the 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), the corporation (and any successor corporation) is not eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that 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 solely on the information submitted, and the representations made, permission is granted to Taxpayer to elect to be an S corporation effective Date 5.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed or implied regarding Taxpayer's eligibility to elect to be an S corporation.

A copy of this letter should be attached to Taxpayer's federal income tax return for its taxable year for which the S corporation election is accepted as timely field. A copy of this letter is being sent to Taxpayer for that purpose.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

H. GRACE KIM
Assistant to the Chief
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes