

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3-PLR-119809-99
Date:
March 22, 2000

Legend

Corporation =

Trust =

LLC =

X =

Z =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear

This responds to a letter dated December 17, 1999, submitted on behalf of Corporation, requesting a ruling under § 1362(g) of the Internal Revenue Code.

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Facts

Corporation was incorporated on D1, and elected subchapter S status effective D2.

On D3, X, the sole shareholder of Corporation, transferred all of the outstanding stock of Corporation to Trust, a trust described in § 1361(c)(2)(A). Prior to this transfer, Corporation had revoked its S election, specifying a prospective effective date of D4.

On D4, LLC, a California limited liability company, acquired all of the stock of Corporation. Z is the sole owner of LLC, and LLC is a disregarded entity for federal tax purposes. Neither LLC nor Z are related to Trust or X, and neither LLC nor Z were Corporation shareholders before D4. In addition, neither LLC nor Z were involved in the decision to revoke the S election of Corporation.

Corporation requests permission pursuant to § 1362(g) and § 1.1362-5 of the Income Tax Regulations to elect S corporation status effective D5.

Analysis

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d) (1) provides that an election under § 1362(a) may be terminated by revocation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if the election has been terminated under § 1362(d), the 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 the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) provides that the Commissioner may permit an S corporation whose election has terminated 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.

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Conclusion

Based solely on the facts and representations submitted, we conclude that Corporation may make a new election under § 1362(a) effective D5. A copy of this letter should be attached to Corporation's federal income tax return for its taxable year for which the S election is accepted as timely filed.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning Corporation's eligibility as a small business corporation under § 1361 to elect to be an S corporation.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to Corporation and another authorized representative.

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.

Sincerely,

Shannon Cohen
Acting Assistant to the Chief, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes