

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:  
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Date:  
June 12, 2000

X =

A =

B =

ESOP =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear :

This letter responds to a letter dated December 16, 1999, submitted by X's authorized representative on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated D1. It elected to be a S corporation effective D2, but revoked that election on D3. It subsequently elected to be an S corporation effective D4. X then revoked its S corporation election effective for the taxable year beginning D5.

On D5, A and B owned 47 percent of the stock of X as community property and A owned 53 percent of the stock of X individually. Subsequent to D5, ESOP acquired X stock by purchase from X, A, and B and by contribution from X. Currently, ESOP owns 90 percent of the stock of X and A owns 10 percent of the stock of X.

X is requesting permission to reelect to be an S corporation effective D6, prior to the termination of the five-year waiting period imposed by § 1362(g) of the Code. A and B represent that

they will not make an election under § 1042 concerning their sale of X stock to ESOP.

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 for X to elect to be an S corporation effective D6. This ruling is conditioned on A and B not making an election under § 1042 concerning the sale of their X stock to ESOP.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code.

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

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

Sincerely yours,  
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