

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-110771-00
Date:
November 22, 2000

Company:

Trust A:

Trust B:

Trust C:

Trust D:

Trust E:

A:

B:

C:

D:

E:

State:

a:

b:

c:

d:

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e:f:g:h:i:j:

Dear

This letter responds to your letter dated May 19, 2000, submitted on behalf of Company, requesting a ruling under § 1362(g) of the Internal Revenue Code that Company may file an S corporation election within five years of the termination of an earlier election. Company represents the following facts.

Company was incorporated in State on a. It transferred to each of Trusts A, B, C, D, and E (the Trusts) b shares of Company stock on c. Company had no other shareholders.

The Trusts were created on c by the parents of A, B, C, D, and E. Under the terms of the instrument creating each Trust, the beneficiary was to receive all income from all trust property.

On d, Company elected under § 1362(a) to be an S corporation, and the Trusts elected under § 1361(e)(3) to be electing small business trusts (ESBTs), effective e. Each of the Trusts had 3 trustees, 2 of whom were unrelated to the beneficiary. A was the sole beneficiary of Trust A and a co-trustee of Trusts B, C, D, and E.

On f, Company revoked its S corporation election, effective g. A, as co-trustee of Trusts B, C, D, and E, consented to Company's revocation (Trust A did not consent).

On h, pursuant to a court order, the Trusts terminated and distributed their shares of Company stock to A, B, C, D, and E, the beneficiaries of the Trusts. On the

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same date, pursuant to a stock purchase agreement, Company redeemed the shares owned by B, C, D, and E, leaving A as the sole shareholder.

On i, Company filed a new S corporation election, effective j. The Trusts, plus A, B, C, D, and E as individuals, consented to the election as shareholders during the period from j to h. Also on i, qualified subchapter S trust (QSST) elections were filed under § 1361(d)(2) for the Trusts, to be effective j.

Except as provided in § 1362(g), § 1362(a)(1) provides that a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(b)(1)(B) provides that, for purposes of subchapter S, the term “small business corporation” means a domestic corporation that is not an ineligible corporation and that does not, among other things, have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(v) provides that an electing small business trust may be a shareholder of an S corporation for purposes of § 1361(b)(1)(B). Section 1361(c)(2)(B)(v) provides that, in the case of a trust described in § 1361(c)(2)(A)(v), each potential current beneficiary of the trust shall be treated as a shareholder.

Section 1361(e)(2) provides that, for purposes of § 1361, the term “potential current beneficiary” means, with respect to any period, any person who at any time during such period is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a), and if that election has been terminated under § 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any tax year before its 5th tax year which begins after the 1st tax 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 by the corporation or such shareholders to terminate the election.

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Based solely on the facts as represented by Company in this ruling request, we conclude that Company has not carried its burden under § 1.1362-5(a) of establishing that, under the relevant facts and circumstances, the Commissioner should consent to its new S corporation election within 5 years of the revocation of its prior S election. Therefore, consent to the election filed by Company on i is denied.

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. Specifically, no opinion is expressed regarding the validity of Company's initial S corporation election or that of the ESBT election.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to Company.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,
DONNA M. YOUNG
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

enclosure: copy for § 6110 purposes