

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-151457-04

Date:

January 18, 2005

Legend

X:

A:

B:

C:

D:

E:

F:

Date 1:

Date 2:

Date 3:

Date 4:

Dear _____ :

This responds to a letter dated August 31, 2004, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

Facts

The information submitted states that X elected to be an S corporation effective for its taxable year beginning Date 1. The shareholders of X revoked its S election effective Date 2. On Date 3, all of X's stock was sold to new shareholders A, B, C, D, E and F. A, as X's secretary, represents that the new shareholders thought that X was a C corporation that was eligible to elect to be an S corporation.

X is requesting permission to reelect to be an S corporation effective Date 4, prior to the termination of the five-year waiting period imposed by § 1362(g).

Law and Analysis

Section 1362(g) 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.

Conclusion

Based solely on the facts submitted and the representations made, permission is granted to X to make an election to be an S corporation, effective Date 4. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 4 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 4. A copy of this letter should be attached to the Form 2553.

As a condition for this S corporation election relief, X and the shareholders of X must amend their federal income tax returns consistent with X having made a timely S corporation election effective Date 4.

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, including whether X was or is a small business corporation under § 1361(b).

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 forwarded to X.

Sincerely,

Beverly Katz
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

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