

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200602021**

Release Date: 1/13/2006

Index Number: 1362.01-02

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-136798-05

Date:

October 03, 2005

Legend

X =

D1 =

D2 =

D3 =

D4 =

Dear

This letter responds to a letter dated May 26, 2005, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated on D1. It elected to be an S corporation effective D2, but revoked that election effective D3.

The shareholders of X intend for X to adopt an employee stock ownership plan (ESOP). On D4, the ESOP will purchase 100% of the issued and outstanding shares from the shareholders. X will elect to be an S corporation effective D4.

X is requesting permission to reelect to be an S corporation effective D4, prior to the termination of the five-year waiting period imposed by § 1362(g). X represents that its shareholders will not make an election under § 1042 upon selling their shares of X stock to the ESOP. X represents that X will not consent to any such election under §§ 4978 and 4979A.

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 section 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 D4. This ruling is conditioned on the shareholders of X not making an election under § 1042 concerning the sale of their X stock to the ESOP and X not consenting to any such election under §§ 4978 and 4979A.

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

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 with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely yours,

Audrey Ellis
Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

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