

Internal Revenue Service

Number: **200709047**

Release Date: 3/2/2007

Index Number: 1362.00-00, 1362.01-02

Department of the Treasury
Washington, DC 20224

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-141871-06

Date: November 15, 2006

X =

State =

A =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear :

This letter responds to your letter, dated August 30, 2006, and subsequent correspondence, on behalf of X as X's authorized representative, requesting election after termination relief under §1362(g) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State on D1, and timely filed a Form 2553, Election by a Small Business Corporation,

effective D1. At that time, X had three individual shareholders. On D2, the shares of one of those original shareholders were revoked. Effective D3, the two remaining shareholders elected to terminate X's S corporation election. Effective D4, the two remaining shareholders transferred all their stock to A, an individual unrelated to the original shareholders. On D5, A filed an S corporation election effective D6.

A desires for X to be an S corporation and requests permission for X to re-elect to be an S corporation effective D6. D6 is prior to the expiration of the five-year waiting period imposed by §1362(g).

LAW AND ANALYSIS

Section 1361(a) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under section 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

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) shall not be eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after the 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, absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election for five taxable years as described in section 1362(g). The Commissioner, however, may permit the corporation to make a new election before the five-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.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X has met its burden under § 1.1362-5(a). We grant permission for X to re-elect to be an S corporation effective D6. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D6 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning D6. A copy of this letter should be attached to the Form 2553.

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. Specifically, no opinion is expressed regarding whether X is otherwise eligible to be an S corporation.

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

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to X.

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for §6110 purposes