

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

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PLR-104324-07

Date:

May 10, 2007

Legend

X =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear

This letter responds to a letter dated January 22, 2007, and subsequent correspondence, submitted on behalf of X, by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated on d1, and elected to be an S corporation effective d2. X subsequently revoked its S corporation election effective on d3. On d4, X's shareholders sold 100% of their shares in X to unrelated parties. The new X shareholders want X to make an S corporation election for the taxable year beginning on d5. Therefore, X requests permission to re-elect to be an S

corporation effective on d5. However, d5 is within the 5-year waiting period imposed by § 1362(g).

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)(1)(A) provides that an election under § 1362(a) may be terminated by revocation.

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 § 1362(g). The Commissioner, however, may permit the corporation to make a new election before the 5-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.

Based solely on the facts and the representations submitted, we conclude that X has met its burden under § 1.1362-5(a). We grant permission for X to reelect to be an S corporation effective d5. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective d5 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning d5. 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, 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's authorized representative.

Sincerely,

James A. Quinn
Senior Technician Reviewer (Acting), Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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