

**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:

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Refer Reply To:

CC:PSI:B03

PLR-104304-18

Date:

August 14, 2018

LEGEND

X =

ESOP =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Class A stock =

Class B stock =

Dear :

This letter responds to a letter dated December 21, 2017, and subsequent correspondence submitted on behalf of X requesting a ruling under § 1362(g) of the Internal Revenue Code (Code).

### FACTS

X, a State corporation, elected to be an S corporation effective Date 1. On Date 2, X converted its existing common stock into two classes of stock: Class A stock and Class B stock. Consequently, X's S corporation election terminated on Date 2 under § 1362(d) when X created a second class of stock. X's sole shareholder, A, sold all of his Class B stock to ESOP, X's employee stock ownership plan, on Date 3. A did not make an election under § 1042.

On Date 4, X redeemed and cancelled all of A's Class A stock. Thus, on Date 4, X had one class of stock, the Class B stock, outstanding owned by ESOP. X is requesting permission to reelect to be an S corporation effective Date 5, 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 on the information submitted and the representations made, X is granted permission to elect to be an S corporation effective Date 5. This ruling is conditioned on A not making an election under § 1042 concerning the sale of his stock to ESOP.

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 § 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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: Copy of this letter  
Copy of this letter for § 6110 purposes

cc: