

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

October 26, 1998

Taxpayer =

Y =

Z =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to a May 15, 1998 ruling request and subsequent correspondence submitted on behalf of X by C, its Vice President, requesting relief under § 1362(g) of the Internal Revenue Code.

The information submitted states that Y was incorporated on

Date 1. Effective Date 2, Y elected to be an S corporation under § 1362(a) of the Code. On Date 3, A, B, C, and D were equal shareholders of Y. D, as a result of subsequently becoming disgruntled with A, B, and C, transferred his Y stock to Z effective Date 4. Z is a limited liability company that is treated as a partnership. Because Z was an ineligible shareholder, Y's election terminated.

A, B, and C, represent that they did not have any knowledge of D's intention to contribute his Y stock to Z. Further, they represent that they could not in good faith and using due diligence have been in a position to safeguard Y against D's transfer of his Y stock to Z.

After confirming that D's transfer of stock to Z terminated Y's S election, Z surrendered its Y stock in exchange for cash as part of a merger of Y into X. X is a corporation formed for the sole purpose of merging Y into X and redeeming Z's stock. The Articles of Merger were duly filed effective Date 5.

Taxpayer is requesting permission to reelect to be an S corporation prior to the termination of the five-year waiting period imposed by § 1362(g) of the Code.

Section 1362(g) of the Code 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.

Based solely on the information submitted, and the representations made, permission is granted to Taxpayer to elect to be an S corporation effective Date 6.

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. In particular, no opinion is expressed or implied regarding Taxpayer's eligibility to elect to be an S corporation.

A copy of this letter should be attached to Taxpayer's federal income tax return for its taxable year for which the S corporation election is accepted as timely filed. A copy of this letter is being sent to Taxpayer for that purpose.

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.

Sincerely,

J. THOMAS HINES
Senior Technician Reviewer
Branch 2
Office of the Assistant
Chief Counsel
(Passthroughs and
Special Industries)

Enclosures: 2
Copy of letter
Copy for § 6110 purposes