

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

February 15, 2000

X =

Y =

Trust =

A =

B =

C =

D =

E =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

Dear :

This letter responds to a letter dated September 15, 1999, and subsequent correspondence, written on behalf of X, requesting

a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X elected to be an S corporation effective for its taxable year beginning D1. On D2, X revoked its S election effective as of D3. On D4, Y acquired from Trust 57.58 percent of X stock. Y did not own any shares of stock in X when X terminated its S election. Y was unrelated to any of the other X shareholders, including Trust. On D5, Y transferred its X stock to A, B, C, and D, each of whom was a shareholder of Y. A, B, C, and D were not related to any other X shareholders and had never been shareholders of X. Currently, the X shares held by A, B, C, and D total 65.96 percent of the outstanding stock of X. E, as X's treasurer, represents that X meets the criteria of a small business corporation under § 1361(b)(1). Additionally, E represents that currently more than 50 percent of X stock is owned by persons who did not own any X stock as of D3, the date of termination of X's S election.

X is requesting permission to reelect to be an S corporation effective D6, prior to the termination of the five-year waiting period imposed by § 1362(g).

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.

Based solely on the information submitted, and the representations made, permission is granted to X to elect to be an S corporation effective D6.

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 X's eligibility to elect to be an S corporation.

A copy of this letter should be attached to X'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 X 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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely yours,

H. GRACE KIM  
Assistant to the Chief  
Branch 2  
Office of the Assistant  
Chief Counsel  
(Passthroughs and  
Special Industries)

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes