

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

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Date:

December 02, 2005

Legend

X =

A =

B =

C =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This letter responds to a letter dated February 24, 2005, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a

ruling under § 1362(g) and § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1, and elected to be an S corporation effective Date 1. A was the sole shareholder of X. On Date 2, A transferred 100% of the stock in X to Trust. Trust was an ineligible shareholder and X's S election terminated on Date 2.

On Date 3, Trust sold 100% of the stock in X to B and C, who are individuals. B and C are unrelated to A and Trust. B and C believed that X was a C corporation that was eligible to elect to be an S corporation. X is requesting permission to reelect to be an S corporation effective Date 4, prior to the five-year waiting period imposed by § 1362(g).

Section 1362(a) provides that except as provided in section 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 1<sup>st</sup> day of the 1<sup>st</sup> 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 section 1362(a) and if such election has been terminated under section 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under section 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 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.

Section 1362(b)(5) provides that if -- (A) an election under § 1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making such election for such taxable year or no such election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make such election, the Secretary may treat such an election as timely made for such taxable

year.

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 Date 4. In addition, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective Date 4. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 4 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 4. 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) 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 forwarded to X's authorized representative.

Sincerely yours,

J. Thomas Hines  
Chief, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

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