

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:2 – PLR-145219-05

Date:

December 19, 2005

LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

Dear

This letter responds to a letter dated August 26, 2005, submitted on behalf of X, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1 and elected to be an S corporation. On Date 2, X's S election terminated. One hundred percent of the stock in X was acquired by new shareholders. X requests permission to reelect to be an S corporation, effective Date 3. Date 3 is prior to the five-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)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st 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 § 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.

Based solely on the representations made and on the information 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 3. Accordingly, provided that X makes an election to be an S corporation, by timely filing (as defined in § 1362(b)) a completed Form 2553 with the appropriate Service Center, effective Date 3, then such election will be treated as timely made for X's taxable year beginning Date 3. 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. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements, including whether all of X's shareholders are eligible S corporation shareholders.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

Beverly Katz
Senior Technician Reviewer, Branch 2
Associate Chief Counsel
(Passthroughs and Special Industries)

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