

Internal Revenue Service

Department of the Treasury

Number: **200139017**
Release Date: 9/28/2001
Index Number: 1362.01-02

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B01 PLR-112568-01
Date:
June 28, 2001

Legend

X =

A =

B =

C =

D =

E =

PRS =

State =

D1 =

D2 =

D3 =

D4 =

This responds to the letter dated February 26, 2001, submitted on behalf of X, requesting a waiver of the 5-year waiting period imposed by § 1362(g) of the Internal Revenue Code for X to reelect subchapter S treatment under § 1362(a).

FACTS

According to the information submitted, X was incorporated under State law. Effective D1, X elected to be treated as a subchapter S corporation. Effective D2, X revoked its subchapter S election. On the date of termination, A and B owned 100 percent of X's stock. Following the revocation, A and B transferred a portion of their X stock to PRS, a general partnership in which C, D, and E were partners.

Subsequently, on or about D3, trusts formed by C, D, and E acquired all of the X stock held by A, B, and PRS. X represents that the trusts formed by C, D, and E are grantor trusts under subpart E of subchapter J of the Code.

X filed a new Form 2553 to be effective D4, and submitted this ruling request seeking a ruling under § 1362(g).

LAW AND ANALYSIS

Section 1362(a) provides, in relevant part, that a small business corporation may elect to be an S corporation.

Section 1362(d)(1)(A) provides that an election under § 1362(a) may be terminated by revocation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a), and if the election has 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 5th taxable year that 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. 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 the 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 solely on the representations made and on the information submitted, we grant permission for X to reelect to be treated as a subchapter S corporation, effective D4. A copy of this letter should be attached to X's next federal income tax return.

The ruling in this letter is based on information and representations submitted by 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 request for ruling, it is subject to verification on examination.

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.

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

Pursuant to the Power of Attorney on file with this office, a copy of this ruling is being sent to X's authorized representatives.

Sincerely,
Matthew Lay
Assistant to the Branch Chief, Branch 1
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter