

Dear _____ :

This letter responds to a letter dated October 2, 2012, and subsequent correspondence, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code.

FACTS

Company was incorporated in State on Date 1. Effective Date 2, A, Company's sole shareholder, elected to terminate Company's S election. On Date 3, A died. A's estate held A's Company stock until it disbursed the stock to A's beneficiaries, B, C, and D, on Date 4. B, C, and D want Company to be an S corporation and request permission for Company to re-elect to be an S corporation effective Date 5. Date 5 is prior to the expiration of the five-year waiting period imposed by § 1362(g).

LAW AND ANALYSIS

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)(1) 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 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. 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.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company has met its burden under § 1.1362-5(a). We grant permission for Company

to re-elect to be an S corporation effective Date 5. Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, with the appropriate service center effective Date 5 within 120 days following the date of this letter, then such election will be treated as timely made for Company's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

Except as expressly provided herein, we express or imply no opinion concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Company is otherwise eligible to be an S corporation.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

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

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

Sincerely,

/s/

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: