

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-115135-18

Date:

October 30, 2018

Legend

Company =

State =

A =

B =

Trust =

X =

Y =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to a letter dated April 30, 2018, 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 in Year 1 and made an S corporation election effective on Date 1. All of Company's shares were held by Trust, a grantor trust that was treated (under subpart E of part 1 of subchapter J of chapter 1) as entirely owned by A. On Date 2, A, grantor of Trust died. A's spouse, B, became the income beneficiary of Trust on Date 2. When B died, X and Y became the income beneficiaries of Trust. On Date 3, Company's S-election terminated. Trust proposes to sell all of the Company's stock to an employee stock ownership plan being formed by the employees of Company. As a result of the sale, the employee stock ownership plan will be the sole shareholder of Company. Company requests permission to re-elect to be an S corporation effective 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 1361(c)(2)(A)(i) provides that, for the purposes of § 1362(b)(1)(B), a trust all of which is treated (under title 26, subtitle A, chapter 1, subchapter J, part I, subpart E of the United States Code) as owned by an individual who is a citizen or resident of the United States may be a shareholder of an S corporation.

Section 1361(c)(2)(A)(ii) and § 1.1361-1(h)(1)(ii) of the Income Tax Regulations provide that, for purposes of § 1361(b)(1)(B), a trust that is described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and that continues in existence after such death is a permitted shareholder, but only for the two-year period beginning on the day of the deemed shareholder's death.

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 prior to Date 4. 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 prior to Date 4 within 120 days following the date of this letter, then such election will be treated as timely made for Company's taxable year beginning prior to Date 4. 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,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer, Branch 1

Office of Associate Chief Counsel

(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter

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