

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

March 21, 2000

LEGEND

X =

Y =

d1 =

d2 =

d3 =

State1 =

State2 =

Dear

This responds to a letter dated January 26, 2000, from your authorized representative on behalf of X, requesting relief under § 1362(g) of the Internal Revenue Code.

FACTS

According to the information submitted, Y was incorporated under State1 law on d1, and elected subchapter S status effective d1. In d2, three of Y's shareholders, transferred shares of Y stock to partnerships, terminating Y's S corporation election.

X was incorporated under State2 law on d3. On d3, Y merged into and with X, with X being the surviving corporation. More than fifty percent of the stock of X is owned by the same persons who, on the date Y's election terminated, owned fifty

percent or more of the stock of Y. The partnerships, however, do not own stock in X.

Y was not aware of the transfers of stock to the ineligible shareholders until after the transfers were completed. The transfers were not part of a plan by Y, or the shareholders having a substantial interest in Y, to terminate Y's election. In addition, neither Y, nor the shareholders who held a substantial interest in Y, intended to terminate Y's election.

X requests permission to elect S corporation status effective d3, prior to the termination 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(g) provides that, if a small business corporation has made an election under § 1362(a) and if the election has been 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 fifth tax year which begins after its first tax year for which the termination is effective, unless the Secretary consents to the election.

Under § 1.1362-5(a) of the Income Tax Regulations 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 fifty 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 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.

Section 1.1362-5(b) provides that a corporation is a successor corporation to a corporation whose election under § 1362 has been terminated if (1) fifty percent or more of the stock of the corporation (the new corporation) is owned, directly or indirectly, by the same persons who, on the date of the termination, owned fifty percent or more of the stock of the corporation whose election terminated (the old corporation); and (2) either the corporation acquires a substantial portion of the assets of the old corporation, or a substantial portion of the assets of the new corporation were assets of the old corporation.

CONCLUSIONS

Based solely on the facts submitted and the representations made, we conclude that X is a successor corporation within the meaning of § 1.1362-5(b). In addition, consent is granted for X to elect S corporation status effective d3.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences under any other provisions of the Code. In particular, no opinion is expressed or implied concerning X's eligibility to elect S corporation status.

A copy of this letter should be attached to X's federal income tax return for the taxable year for which the S corporation election is accepted as timely filed.

Pursuant to a power of attorney on file with this office, copies of this letter are being sent to your authorized representatives.

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.

Sincerely Yours,

Shannon Cohen
Acting Assistant to the Chief, Branch 3
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes