

## Internal Revenue Service

## Department of the Treasury

Number: **200130031**

Release Date: 7/27/2001

Index Number: 1362.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:Br.1-PLR-109222-01

Date:

April 30, 2001

X =

Y =

a =

b =

State =

D1 =

D2 =

D3 =

D4 =

This letter responds to a letter dated January 22, 2001, and subsequent correspondence, written on behalf of X, requesting that we rule that X is not a successor corporation of Y as defined by section 1.1362-(5)(b).

### FACTS

According to the information submitted, X, a domestic entity, was incorporated under the laws of State on D1. On D2, X acquired all of the shares of Y, which was a corporation with a Subchapter S election in effect and which had made Qsub elections for its two subsidiaries, a and b. At the time of X's acquisition of Y, none of the shareholders of X owned, directly or indirectly, any of the shares of Y. On D3, Y was merged into X. Subsequent to the merger, a previous shareholder of Y acquired less than a 2% interest in X.

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## Law and Analysis

Section 1362(g) of the Code provides that, if a small business corporation has made an election under section 1362(a) and if such election has been terminated under section 1362(d), the corporation (and any successor corporation) is not eligible to make an election under section 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to 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 50 percent or more of the stock of the corporation (new corporation) is owned, directly or indirectly, by the same persons who, on the date of the termination, owned 50 percent or more of the stock of the corporation whose election terminated (the old corporation); and either the new corporation acquires a substantial portion of the assets of the old corporation, or a substantial portion of the assets of the new corporation were the assets of the old corporation.

## Conclusion

Based solely on the information submitted, and the representations made, we conclude that X is not a successor corporation within the meaning of section 1.1362-5(b).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed on whether X otherwise qualifies as a small business corporation under 1361(b) or that a and b otherwise meet the requirements of section 1361(b)(3).

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 your authorized representative.

Sincerely,  
**/s/ David R. Haglund**  
Senior Technician Reviewer,  
Branch 1  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for section 6110 purposes