

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

April 24, 2000

### LEGEND

Company =

d1 =

d2 =

d3 =

d4 =

State =

SH =

Dear

This letter responds to your letter dated January 17, 2000 on behalf of Company, requesting permission for Company to reelect S corporation status under § 1362(g) of the Internal Revenue Code.

### FACTS

According to the information submitted, Company was incorporated on d1 under the laws of State, and elected under § 1362(a) to be treated as an S corporation on d2. Company revoked its S corporation election effective d3. At the time of the revocation, Company's sole Shareholder was SH.

Company desires to reelect S corporation status effective d4, a date that is prior to the five year waiting period mandated by § 1362(g). Company represents that as of d4, 77% of Company's stock was owned by individuals who were not shareholders of Company on d3, the date of the revocation.

### LAW AND ANALYSIS

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), such 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 such termination is effective.

Section 1.1362-5(a) of the Income Tax Regulations provides, in part, that the Commissioner may permit a corporation to make a new election before the five-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 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.

### CONCLUSION

Based solely on the facts submitted and the representations made, we grant Company permission to reelect S corporation status effective d4. As discussed with your authorized representative, Company must, pursuant to § 1362(a) and the regulations thereunder, timely file with the applicable service center a valid Form 2553, Election by a Small Business Corporation. Additionally, a copy of this letter should be attached to Company's federal income tax return for the taxable year for which the S corporation election is accepted as timely filed.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences under any other provisions of the Code. Specifically, we express no opinion regarding whether Company is eligible to be an S corporation.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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,  
Joni Larson  
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