Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200047034**
Release Date: 11/24/2000
Index Number: 1362.01-02

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-110830-00
Date:
August 25, 2000

X =
A =
B =
C =
D =
E =
F =
D1 =
D2 =
D3 =
D4 =

Dear :

This letter responds to a letter, dated April 21, 2000, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code.

The information submitted states that X elected to be an S corporation effective for its taxable year beginning D1. On D2, A, X's sole shareholder at that time, transferred 30 percent of A's X stock to B. At the time of the transfer, B was not eligible to be an S corporation shareholder. Therefore, X's S election terminated on D2.

On D3, A transferred to C, D, E and F the remaining X stock owned by A, representing 70 percent of the outstanding stock of X.

Currently B is eligible to be an S corporation shareholder. The X shares held by C, D, E, and F currently total 70 percent of the outstanding stock of X. C, D, E, and F did not own any shares of stock in X when X terminated its S election.

X is requesting permission to reelect to be an S corporation effective D4, prior to the termination of the five-year waiting period imposed by § 1362(g).

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) is not 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 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. 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.

Based solely on the facts and the representations submitted, permission is granted to X to elect to be an S corporation effective D4.

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

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

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 X's authorized representative.

Sincerely yours,
H. GRACE KIM
Assistant to the Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes