Internal Revenue Service

Department of the Treasury

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Person to Contact:
Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1-PLR-105918-99
Date:
April 29, 1999

Legend:

X =

Y =

Trust =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

State =

:

This responds to the letter dated February 18, 1999, submitted on behalf of X requesting a ruling under § 1362(g) of the Internal Revenue Code.

FACTS

X is a corporation formed under the laws of State on D1. X made a valid election to be treated as an S corporation effective D2. On D2, the sole shareholder of X was A. On D3, A transferred all of her shares to Trust, thereby terminating X's S status. On D4, Y was incorporated under the laws of State. Y made a timely election to be treated as an S corporation effective D4. On D5, Y purchased all of the shares of X from Trust. Y has three shareholders who are unrelated to X, A, and Trust. Y intended to treat X as a Qualified Subchapter S Subsidiary (QSSS) effective D6, and has filed the necessary forms with the appropriate service center to make such an election, subject to our ruling herein.

LAW AND ANALYSIS

Section 1362(g) of the Code 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 its 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.

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 assets of the old corporation.

CONCLUSION

Based solely on the information submitted, and the representations made, Y is permitted to make an QSSS election for X, effective D6.

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 concerning the income tax treatment of the contribution of the X shares to Trust or the sale of those shares to the unrelated party.

This ruling is directed only to the taxpayer(s) 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,

Signed/David R. Haglund

David R. Haglund
Senior Technician Reviewer
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

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

cc: