Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1-PLR-104198-99
Date:
June 15, 1999

Legend:

A =

X =

Y =

Z =

D1 =

D2 =

D3 =

State =

This responds to the letter dated February 10, 1999, submitted on behalf of X requesting that we rule that X may make an S election and Qualified Subchapter S Subsidiary (Qsub) elections as to Y and Z effective D3.

FACTS

X was incorporated under the laws of State on D1. Upon formation, X's sole shareholder was A. On D2, X acquired all of the shares of Y and Z, each of which was a corporation with a Subchapter S election in effect. Prior to their acquisition by X, Y and Z were commonly owned by two shareholders, A and B, who had 25 percent and 75 percent interests, respectively. After the acquisition on D2, A held a 76.54 percent interest in X. X did not make an election to be treated as an S corporation under the Code effective D2, and for the short taxable year commencing D2, X, Y, and Z will file a consolidated return.

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(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, we conclude that X is not a successor corporation within the meaning of § 1.1362-5(b) and is permitted to make an S election and Qsub elections for Y and Z, effective D3.

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.

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,

Signed/David R. Haglund
David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
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