Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Index Number: 1362.01-02
1362.01-03

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:3 PLR-111987-99
Date:
October 4, 1999

Company:

State:

M:

a:

b:

c:

d:

e:

Dear

This letter responds to a letter from your authorized representative dated June 30, 1999, submitted on behalf of Company, requesting rulings under § 1362(g) and (b)(5) of the Internal Revenue Code regarding Company's S corporation election within five years of the termination of an earlier election. Company represents the following facts.

Company was incorporated in State on a and elected under § 1362(a) to be an S corporation effective b. M, one of Company's original shareholders, sold all of his stock back to Company on c. Company revoked its S corporation election on d (M was not a shareholder at this time).

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On e, unaware of the revocation of Company's S election, M became the sole shareholder of Company. M represents that he intended Company to be an S corporation beginning on e. For reasons stated in the ruling request, Form 2553 (Election by a Small Business Corporation) was not timely filed. Company filed Form 1120S (U.S. Income Tax Return for an S Corporation) for its most recently completed tax year.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if that election has been terminated under § 1362(d), the corporation (and any successor corporation) shall not be eligible to make an election under § 1362(a) for any tax year before its 5th tax year which begins after the 1st tax year for which the termination is effective, unless the Secretary consents to the election.

Regarding the election after termination, § 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.

Section 1362(b)(1) provides in general that an election under § 1362(a) may be made by a small business corporation for any tax year--

(A) at any time during the preceding tax year, or

(B) at any time during the tax year and on or before the 15th day of the 3d month of the tax year.

Section 1362(b)(3) provides that if--

(A) a small business corporation makes an election under § 1362(a) for any tax year, and

(B) that election is made after the 15th day of the 3d month of the tax year and on or before the 15th day of the 3d month of the following tax year,

then that election shall be treated as made for the following tax year.

Section 1362(b)(5) provides that if--

(A) an election under § 1362(a) is made for any tax year (determined without regard to § 1362(b)(3)) after the date prescribed by this subsection for making the election for that tax year or no such election is made for any tax year, and

(B) the Secretary determines that there was reasonable cause for the failure to timely make the election,

the Secretary may treat such election as timely made for that tax year (and § 1362(b)(3) shall not apply).

After applying the applicable law and regulations to the facts as presented in this ruling request, we rule that-

1) Company may elect to be an S corporation, effective d, and

2) Company's late election under § 1362(a) shall be treated under § 1362(b)(5) as timely filed for its tax year beginning d.

Ruling 2 is contingent, however, on Company filing Form 2553 with an effective date of d with the appropriate service center no later than 60 days from the date of this letter. A copy of this ruling letter should be attached to the Form 2553.

Except for the specific rulings above, no opinion is expressed or implied concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed on whether Company otherwise is eligible to be an S corporation.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

JEFF ERICKSON
Assistant to the Chief, Branch 3
Office of Assistant Chief Counsel
(Passthroughs and Special Industries)

enclosure: copy of this letter
copy for § 6110 purposes