

FACTS

The information submitted states that X was incorporated on Date 1, under the laws of State. Effective Date 2, X elected to be taxed as an S corporation.

On Date 3, Y purchased 100% of X's shares. X represents that Y was not an eligible S corporation shareholder on Date 3. As a result, X's S corporation election terminated on Date 3.

On Date 4, A purchased 100% of X's shares from Y. A owned n% of X's shares prior to Y's purchase of X on Date 3. X is requesting permission to elect to be an S corporation effective Date 5, prior to the termination of the five-year waiting period imposed by § 1362(g).

LAW AND ANALYSIS

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

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) 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, unless the Secretary consents to such election.

Section 1.1362-5(a) of the Income Tax Regulations provides, in part, 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.

CONCLUSION

Based solely on the facts and the representations submitted, we conclude that the event causing the termination of X's S corporation election 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. Therefore, X is granted permission to make an election to be an S corporation effective Date 5.

Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date 5 within 120 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

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 regarding whether X is otherwise eligible to be an S corporation.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested in. § 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Richard T. Probst

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

PLR-106832-24

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cc: