



State =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear

This responds to a letter dated March 14, 2004, together with subsequent correspondence, submitted on behalf of X requesting relief under § 1362(g) of the Internal Revenue Code.

#### FACTS

X was incorporated under the laws of State on D1. X elected to be an S corporation effective D2. X revoked its S corporation election on D3. On D4, all of X's stock was sold to new shareholders A, B, C, D, E, F, G, H, I, and J.

X is requesting permission to reelect to be an S corporation effective D5, prior to the termination of the five-year waiting period imposed by section 1362(g).

#### LAW AND ANALYSIS

Section 1362(g) provides that, if a small business corporation has made an election under section 1362(a) and if such election has been terminated under section 1362(d), the corporation (and any successor corporation) is not eligible to make an election under section 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.

## CONCLUSION

Based solely on the facts submitted and the representations made, permission is granted to X to make an election to be an S corporation, effective D5. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D5 within 60 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning D5. 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, including whether X was or is a small business corporation under section 1361(b).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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,

/s/ Dianna K. Miosi

Dianna K. Miosi  
Branch Chief, Branch 1  
(Passthroughs & Special Industries)

Enclosures (3)

Copy of this letter  
Copy of § 6110 purposes  
Original Form 2553