

shares of stock owned by the shareholder, and the dates on which the shareholder owned any stock. The corporate consent statement should include the name, address, and taxpayer identification numbers of the corporation and each shareholder.

(f) *Status of corporation.* The status of the corporation after the terminating event or invalid election and before the determination of inadvertence is determined by the Commissioner. Inadvertent termination or inadvertent invalid election relief may be granted retroactively for all years for which the terminating event or circumstance giving rise to invalidity is effective, in which case the corporation is treated as if its election was valid or had not terminated. Alternatively, relief may be granted only for the period in which the corporation became eligible for subchapter S or QSub treatment, in which case the corporation is treated as a C corporation or, in the case of a QSub with an inadvertently terminated or invalid election, as a separate C corporation, during the period for which the corporation was not eligible for its intended status.

(g) *Effective/applicability date.* Paragraphs (a), (b), (c), (d), and (f) of this section are effective on August 14, 2008.

[T.D. 8449, 57 FR 55453, Nov. 25, 1992, as amended by T.D. 9422, 73 FR 47530, Aug. 14, 2008]

#### § 1.1362-5 Election after termination.

(a) *In general.* Absent the Commissioner's consent, an S corporation whose election has terminated (or a successor corporation) may not make a new election under section 1362(a) for five taxable years as described in section 1362(g). However, the Commissioner may permit the corporation to make a new election before the 5-year period expires. 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.

(b) *Successor corporation.* A corporation is a *successor corporation* to a corporation whose election under section 1362 has been terminated if—

(1) 50 percent or more of the stock of the corporation (the 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

(2) 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.

(c) *Automatic consent after certain terminations.* A corporation may, without requesting the Commissioner's consent, make a new election under section 1362(a) before the 5-year period described in section 1362(g) expires if the termination occurred because the corporation—

(1) Revoked its election effective on the first day of the first taxable year for which its election was to be effective (see § 1.1362-2(a)(2)); or

(2) Failed to meet the definition of a small business corporation on the first day of the first taxable year for which its election was to be effective (see § 1.1362-2(b)(2)).

[T.D. 8449, 57 FR 55454, Nov. 25, 1992]

#### § 1.1362-6 Elections and consents.

(a) *Time and manner of making elections—(1) In general.* An election statement made under this section must identify the election being made, set forth the name, address, and taxpayer identification number of the corporation, and be signed by a person authorized to sign the return required to be filed under section 6037.

(2) *Election to be an S corporation—(i) Manner of making election.* A small business corporation makes an election