Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201252001**
Release Date: 12/28/2012

Index Number: 1362.04-00, 1362.00-00, 1362.01-00, 1362.02-00, 1362.02-02

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-105526-12
Date:
September 18, 2012

LEGEND

X =

Former Name =

State1 =

State2 =

Founders =

New Investors =

New Investor A =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

Dear :

This responds to the letter dated February 1, 2012, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted, Founders formed X under the laws of State1 on D1 under the name Former Name. X made an election to be treated as an S corporation effective D2. On D3, X began a plan for reorganization and investment by converting to an entity formed under the laws of State2 under its current name. Then on D4, X issued interests to New Investors, several of which are ineligible shareholders, and also issued a second class of interests to the Founders and to several of the New Investors. These transactions caused X's S corporation election to terminate. On D5, additional interests were issued to New Investor A, one of the New Investors. On D6,

the termination of the S election was discovered. On D7, steps were taken so that X again became a small business corporation owned solely by Founders.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law and Analysis

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

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 taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to makes such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and representation made, we conclude that the transactions undertaken pursuant to X's plan of reorganization and investment resulted in a termination of X's election to be treated as an S corporation. We also conclude that the termination constituted an "inadvertent termination" within the meaning of § 1362(f).

Under the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D3, and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d). The New Investors will be treated as being shareholders of X from D4 to D7, when the Founders again became the sole shareholders of X.

Your ruling request indicated a proposal for the federal income tax treatment of the D7 transactions described above. We are not in agreement with that proposed treatment and no inference is to be drawn from this letter that we have accepted it. Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax purposes.

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.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

Joy C. Spies
Joy C. Spies
Senior Technician Reviewer
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter,
Copy for § 6110 purposes

cc: