

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:1
PLR-137392-04

Date:
September 14, 2004

Legend

X =

Date 1 =

Date 2 =

Date 3 =

a =

State =

Dear :

This letter responds to your letter dated June 30, 2004, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State. X elected to be treated as an S corporation for federal tax purposes, effective Date 1. On Date 2, X transferred a shares of X to an ineligible shareholder. On Date 3, X caused the a shares to be transferred to eligible shareholders.

X represents that the transfer of its stock to an ineligible shareholder was not motivated by tax avoidance or retroactive tax planning. Further, upon discovering the terminating event, X and its shareholders immediately took steps to return X to a small

business corporation. X and its shareholders agree to make 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) of the Code.

LAW AND ANALYSIS

Section 1361(a)(1) provides that, for purposes of the Code, the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under section 1362(a) is in effect for the year.

Section 1361(b)(1)(B) provides that, for purposes of subchapter S, the term “small business corporation” means a domestic corporation that is not an ineligible corporation and that does not, among other things, have as a shareholder a person (other than an estate, a trust described in section 1361(c)(2), or an organization described in section 1361(c)(6)) who is not an individual.

Section 1362(f) provides that if (1) an election under section 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to section 1362(b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under section 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to section 1362(f), agrees to make 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 such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the facts represented and the information submitted by X, we conclude that X's S corporation election terminated on Date 2 because X's stock was transferred to an ineligible shareholder. We also conclude that the termination was an inadvertent termination within the meaning of § 1362(f). Consequently, we conclude that X will be treated as an S corporation from Date 2, and thereafter, unless X's S corporation election otherwise terminates under § 1362(d).

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 concerning whether X is a valid S corporation.

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.

Sincerely,

/s/ Dianna K. Miosi

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

Enclosures (2)

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