

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

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Date:

March 30, 2005

### LEGEND:

X =

A =

B =

C =

Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

n =

Dear

This letter responds to a letter dated December 29, 2004, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated on Date 1. X elected to be treated as an S corporation effective Date 2. On Date 3, A acquired all of the outstanding shares of X. On Date 4, X issued n of its shares to Y, an ineligible shareholder. Y is an S corporation owned by B and C. The transfer of X stock to Y terminated X's S corporation election. On Date 5, A learned that Y was not an eligible shareholder. On Date 6, Y transferred the n shares of X stock to B and C.

X represents that the transfer of X stock to Y, an ineligible shareholder, was not motivated by tax avoidance or retroactive tax planning. For all taxable years X's shareholders' income was reported consistent with X qualifying as an S corporation. X, Y, A, B, and C agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require.

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

Section 1361(b)(1)(B) provides that a "small business corporation" cannot have as a shareholder a person (other than an estate and other than a trust described in § 1361(c)(2) or an organization described in § 1361(c)(6)) who is not an individual.

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

Section 1362(f) provides that (1) if an election under § 1362(a) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation is a small business corporation, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 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 termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we

conclude that X's S corporation election was terminated on Date 4 when Y, an ineligible shareholder, acquired X stock. We also conclude that this termination was inadvertent within the meaning of § 1362(f).

We further hold that under the provisions of § 1362(f), X will be treated as an S corporation from Date 4, and thereafter, provided that X's S election was valid and was not otherwise terminated. B and C will be treated as the shareholders of X from Date 4 through Date 6 for the n shares that were originally issued to Y.

Accordingly, all of the shareholders of X, in determining their respective income tax liabilities for the period beginning Date 4 and thereafter must include their pro rata share of the separately stated and non-separately computed items of X as provided in § 1366, make any adjustments to basis provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling shall be null and void.

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed on whether X was otherwise eligible to be treated as an S corporation.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely yours,

Beverly Katz  
Senior Technician Reviewer, Branch 2  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purpose s