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Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:02
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Date:
February 29, 2008

X =

A =

B =

State =
D1 =
D2 =
D3 =
D4 =
D5 =
z =
y =
x =

Dear :

This letter responds to a letter dated August 31, 2007, submitted by X's authorized representative on behalf of X, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. A and B are the shareholders of X. X has issued and outstanding z Class A shares and z Class B shares. The Class A shares and the Class B shares confer identical rights to distribution and liquidation proceeds, but Class B shares do not have voting rights while Class A shares do have voting rights. On D3, A and B entered into an agreement (the "Shareholders' Agreement") providing, inter alia, that (1) in the event that any person makes an offer to purchase the Class A shares and the Class B shares, each holder of Class B shares

must sell such shares if so directed by a majority vote of the holders of Class A shares and (2) if such a sale occurs, the sale price for the Class B shares shall be approximately y% of the price paid for the Class A shares, and the approximate x% reduction in the sale price of the Class B shares shall be allocated to the price paid for the Class A shares.

In D4, X's tax advisors notified X that the Shareholder's Agreement may have caused the termination of X's S corporation election because it may have caused X to have more than one class of stock for purposes of § 1361(b)(1)(D). To remedy this problem, on D5, A and B terminated the Shareholder's Agreement. No shares of X stock were transferred at any time between D3 and D5.

X represents that the circumstances resulting in the possible termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning, and that it has filed its tax returns as if it were an S corporation at all times since D3. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1361(a)(1) 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)(D) provides that the term "small business corporation" means a domestic corporation that does not have more than one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that a corporation that has more than one class of stock does not qualify as a small business corporation. Except as provided in § 1.1361-1(l)(4) (relating to instruments, obligations, or arrangements treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

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 if (1) an election under § 1362(a) by any corporation was terminated under paragraph (2) or (3) of § 1362(d), (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 facts submitted and the representations made, we conclude that if the Shareholder's Agreement did create a second class of stock, the consequent termination of X's S corporation election on D3 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation as of D3 and thereafter, provided that X's S corporation election is valid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election, or regarding A or B's eligibility to be S corporation shareholders.

In accordance with the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes

cc: