

## Internal Revenue Service

Number: **201017009**

Release Date: 4/30/2010

Index Number: 1362.04-00, 1361.03-02

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-135317-09

Date:

January 21, 2010

### Legend:

X =

State =

Date 1 =

Date 2 =

Date 3 =

Shareholder =

Dear :

This responds to a letter dated July 10, 2009, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

### **FACTS**

According to the information submitted, X was incorporated on Date 1 under the laws of State. X elected to be treated as an S corporation effective Date 1. On Date 2, Shareholder became an ineligible shareholder of X. On Date 3, Shareholder ceased to be an ineligible shareholder of X.

X represents that it did not intend for its S corporation election to terminate and the termination was not motivated by tax avoidance. Finally, X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as an S corporation.

### **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 for the taxable year.

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

Section 1362(d)(2)(A) 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 the corporation is an S corporation) the corporation ceases to be a small business corporation. The termination is effective on and after the day of cessation. § 1362(d)(2)(B).

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consent, or (B) was terminated under § 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 the 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 of the corporation at any time during the period specified pursuant to this subsection, 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, such corporation shall be treated as an S corporation during the period specified by the Secretary.

### **CONCLUSION**

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S election constituted an "inadvertent termination" within the meaning of § 1362(f).

Further, we conclude that, pursuant to § 1362(f), X will be treated as continuing to be an S corporation from Date 2 and thereafter, assuming X's S election is valid and not otherwise terminated under § 1362(d).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the Code, including whether X was otherwise a valid S corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

*David R. Haglund*

David R. Haglund  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)