

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State =

A =

B =

Estate =

\$y =

Dear _____ :

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

FACTS

According to the information submitted, we understand the relevant facts to be as follows:

X was incorporated on Date 1 in accordance with the laws of State and filed an election to be treated as an S corporation effective Date 3. On Date 2, the shareholders of X engaged in several transactions that were intended to result in A and B owning all of the outstanding shares of X. Specifically, two other shareholders of X transferred all of their X shares to A and B by agreements dated Date 2. After those transfers, the only remaining shareholders of X were A, B, and Estate. A stock assignment dated Date 2 provided for the transfer of Estate's shares in X to A in exchange for \$y. However, the agreement was not executed by the administrator of Estate. An unsigned check in the amount of \$y, drawn on the account of A and B, was prepared to the order of Estate and attached to the stock assignment. The attorney who prepared the stock assignment sent the document to A for delivery and execution by Estate's administrator along with payment. However, the attorney directed A not to execute the assignment or make payment pending further instruction. The administrator of Estate was appointed on Date 5.

On Date 4, A and B signed X's Form 2553, Election by Small Business Corporation, based on their belief that they were the only two shareholders of X. The administrator of Estate did not sign the Form 2553.

On Date 6, the check for \$y was delivered by A to the administrator of Estate and the administrator of Estate executed the assignment of the stock from Estate to A.

X represents that at all times on and after Date 3, A, B, and the administrator of Estate treated the shares of X owned by Estate as owned by A because they believed that the transfer from Estate to A had been completed as of Date 2. X represents that the events that resulted in the invalid S election were not motivated by tax avoidance or retroactive tax planning, and that X and its shareholders have at all relevant times treated X as an S corporation. X and its shareholders have consented to make any adjustments that the Secretary may require, consistent with the treatment of X as an S corporation effective Date 3.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation that is not an ineligible corporation and that does not (A) have more than 100 shareholders; (B) 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; (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1362(a)(2) provides that an election under § 1362(a) is valid only if all persons who are shareholders in the corporation on the day on which the election is made consent to the election.

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 consents, or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the 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 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 the ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the information submitted and the representations made, we conclude that X's subchapter S election was ineffective because it was not signed by all of X's shareholders. In addition, we conclude that the ineffectiveness was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as continuing to be an S corporation from Date 3, and thereafter, provided that X's S election was not otherwise invalid or terminated 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 otherwise eligible to be treated as an 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/s/

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

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes

cc: