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Washington, DC 20224

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Person To Contact:
, ID No.
Telephone Number:

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Date:
July 08, 2010

LEGEND

X =

A =

State =

p =

d1 =

d2 =

d3 =

d4 =

d5 =

Dear :

This letter responds to a letter, dated January 29, 2010, and subsequent correspondence, on behalf of X from X's authorized representative, requesting inadvertent termination relief under §1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State on d1, and elected to be treated as an S corporation effective d2. In d3, shareholders of X transferred p shares of X stock to A. Prior to d4, A was a resident alien. However, in d4, A's status as a resident alien was revoked, causing A to become a nonresident alien. The change in A's status caused X's status as an S corporation to terminate. A and the other shareholders of X did not intend to terminate X's status as an S corporation. X represents that the transfer of shares to A was not motivated by tax avoidance, and neither X nor its shareholders intended to obtain, nor did obtain, a tax benefit by having A as a shareholder.

On d5, X reacquired all the shares transferred to A. In addition, on d5, X and A entered into an agreement that A would not be treated as a shareholder of X from d3 through d5. X did not allocate any income, gain, loss, or deductions to A. X and each person that was a shareholder of X subsequent to d3 filed their United States income tax returns in a manner consistent with the treatment of X as an S corporation. X, A, and each shareholder of X agree to make any adjustments consistent with the treatment of X as an S corporation that the Secretary may require.

X requests a ruling that the termination of its S corporation election was inadvertent within the meaning of §1362(f).

LAW AND ANALYSIS

Section 1361(a) 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)(B) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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(a) provides that, except as provided in §1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business

corporation, and that any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if -- (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2); (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 for which the termination occurred is a small business corporation, or to acquire the required shareholder consents; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such 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 representations made, we conclude that X's S corporation election was terminated in d4 because A was an ineligible shareholder of X. We further conclude that the termination of X's S corporation election constituted an inadvertent termination within the meaning of §1362(f). Under the provisions of §1362(f), X will be treated as an S corporation from d4, and thereafter, provided that, apart from the inadvertent termination described above, X's S corporation election was otherwise valid and has not otherwise terminated under §1362(d).

From d3 to d5, the shareholders of X that transferred shares to A must be treated as directly owning the shares of X that were transferred to A, in addition to any other shares in X that they held during such period. All shareholders of X must include the pro rata share of the separately and nonseparately computed items of X as provided in § 1366, make adjustments to basis as provided in § 1367, and take into account any distributions as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, except as specifically ruled above, we express or imply no opinion regarding X's eligibility to be 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.

Sincerely,

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

Enclosures (2)
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cc: