

**Internal Revenue Service**

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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:B02

PLR-102529-10

Date:

July 08, 2010

X =

State =

A =

B =

C =

D =

Date =

1

Date =

2

Date =

3

Date =

4

Year =

Dear :

This responds to a letter dated January 15, 2010, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on Date 1. X made an election to be treated as an S corporation effective Date 2. X has had four shareholders, A, B, C, and D, during the period at issue in this request. From Date 3 to Date 4, X made disproportionate distributions to its shareholders by failing to make distributions to A. From Date 3 to Date 4, X had only one class of common stock outstanding, with each share having an identical right to distribution and liquidation proceeds. No provision in X's articles of incorporation or bylaws or other binding agreement altered that right.

X represents that it did not intend to create a second class of stock or to terminate X's S corporation election and that the circumstances resulting in the possible termination of the election were not motivated by tax avoidance or retroactive tax planning. X and its shareholders consent to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary. X represents that it will make necessary adjustments to rectify the disproportionate distributions made from Date 3 to Date 4. Additionally, B, C, and D agree to treat these disproportionate distributions as loans and to repay these amounts plus accrued interest to X.

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), (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 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, the corporation will 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 X's S corporation election may have terminated on Date 3 because X may have had more than one class of stock. However, we conclude that, if X's S election was terminated, such a termination was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d). This ruling is contingent upon B, C, and D issuing to X, within 120 days of this letter, notes for the repayment of the disproportionate distributions. This ruling is further contingent upon X filing income tax returns for Year and thereafter consistent with this ruling.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any provision of the Code. Specifically, no opinion is expressed, for federal tax purposes, regarding X's eligibility to be an S corporation nor the validity of the loans from B, C, and D to X.

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.

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.

Sincerely,

Richard T. Probst  
Branch Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: