

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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October 12, 2010

Legend

X =

State =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This responds to a letter dated June 10, 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. From Date 3 to Date 4, X

made disproportionate allocations of income and disproportionate distributions to its shareholders and by failing to make correct distributions to A and B. From Date 3 to Date 4, X had two classes of common stock outstanding, however, the shares of both classes of stock had identical rights 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 X and its shareholders made the necessary adjustments on Date 5 to rectify the disproportionate allocations and disproportionate distributions made from Date 3 to Date 4.

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).

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.

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 representatives.

Sincerely,

Melissa C. Liquerman
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: