

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.
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February 24, 2012

LEGEND

X =

Y =

State =

D1 =

D2 =

Dear _____ :

This responds to a letter dated September 13, 2011, submitted on behalf of X by its authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations made by X:

X was organized as a limited partnership under the laws of State. X filed a Form 8832, effective D1, electing to be treated as an association taxable as a corporation for federal tax purposes. X also elected to be treated as an S corporation effective D1.

X had three partners. One of the partners, Y, was initially a disregarded entity for federal tax purposes but, effective D2, filed an election to be treated as a C corporation for federal tax purposes. The election made Y an ineligible shareholder of X under § 1361(b)(1), thus resulting in the termination of X's S election. After discovery of the terminating event, X and its shareholders took corrective action by transferring Y's stock in X to an individual.

X represents that its S corporation termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X also represents that at all times during the termination period, X and all of its shareholders have timely and consistently filed all appropriate tax returns consistent with X's treatment as an S corporation. Further, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule under § 1362(f) that may be required by the Secretary.

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 the year. Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, and a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

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

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, 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 of inadvertent termination of the S election, 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 termination, the corporation is 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 X's S election terminated on D2 because it had an ineligible shareholder. We further conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective D2 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

Except as specifically stated in this letter, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, 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) 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 the taxpayer's authorized representative.

Sincerely,

Joy C. Spies
Joy C. Spies
Acting Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes