

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201301011**

Release Date: 1/4/2013

Index Number: 1362.01-00, 1362.00-00,  
1362.04-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-137471-12

Date:  
September 25, 2012

LEGEND

X =

State =

IRA =

A =

D1 =

D2 =

D3 =

Dear \_\_\_\_\_ :

This responds to a letter dated August 29, 2012, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted, X was incorporated under the laws of State on D1. X made an election to be treated as an S corporation effective D2. X

subsequently discovered that X's election was inadvertently invalid on D2 because a portion of shareholder A's shares were held through IRA, an ineligible shareholder. On D3, X redeemed IRA's stock. Also on D3, stock of X was transferred to an ineligible shareholder, causing X to no longer be eligible to be an S corporation. X seeks a ruling that X will be treated as an S corporation from D2 to D3.

X represents that the invalid election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require.

### 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 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, 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(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was 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 such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event 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 such ineffectiveness or termination, the corporation shall be 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 corporation election on D2 was invalid, and thus not effective. We conclude that this invalid election was inadvertent within the meaning of § 1362(f). We further

hold that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 to D3, provided X's S corporation election was otherwise valid and provided that the election was not otherwise terminated under § 1361(d).

As a condition for this ruling, for any tax periods between D2 and D3 in which X reported a net loss, IRA will be treated as the shareholder of the shares of stock at issue. For any tax periods between D2 and D3 in which X reported a net gain, A will be treated as the shareholder of the shares of stock at issue.

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 was otherwise eligible 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.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

David R. Haglund

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