

## Internal Revenue Service

## Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-123126-12

Date:

November 05, 2012

### LEGEND

Company =

Holdings =

State =

Date 1 =

Date 2 =

Date 3 =

Purchasers =

m =

Dear :

This letter responds to a letter dated May 30, 2012, and subsequent correspondence, submitted on behalf of Company by Company's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

### FACTS

Holdings, a State corporation that elected to be an S corporation effective Date 1, wholly-owned Company, a State corporation, as of Date 2. Holdings elected to treat Company as a qualified subchapter S subsidiary (QSub) effective Date 2. On Date 3, Holdings and Purchasers executed a Stock Purchase Agreement in which Purchasers agreed to purchase m shares of stock in Company from Holdings. Purchasers transferred funds to Holdings to purchase Company stock. However, before Holdings transferred any stock to Purchasers, it was discovered that Company was a QSub. Consequently, Holdings never transferred any of Company's stock to Purchasers. The parties terminated the Stock Purchase Agreement and Purchasers' funds were refunded.

Company represents that if its QSub election terminated when Holdings executed the Stock Purchase Agreement with Purchasers, the termination was inadvertent and was not motivated by tax avoidance or retroactive tax planning. It is represented that since Date 2, Holdings has treated Company as a QSub. Company and Holdings have agreed to make any adjustments consistent with the treatment of Company as a QSub as may be required by the Secretary.

### LAW AND ANALYSIS

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (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 a QSub, as the case may be, 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 or a QSub, as the case may be) 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 or a QSub, as the case may be during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that if Company's QSub election terminated on Date 3 when Holdings executed the Stock

Purchase Agreement with Purchasers, the termination was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), Company will be treated as continuing to be a QSub from Date 3 and thereafter, provided Company's QSub election was valid and was not otherwise terminated under § 1361(b)(3)(C).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether Company is otherwise eligible to be treated as a QSub or whether Holdings is eligible to be treated as 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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes

cc: