

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:B02
PLR-125836-12

Date:
November 21, 2012

Legend

X =

Y =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to a letter dated June 12, 2012, submitted by X's authorized representative on behalf of X and Y, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X incorporated on Date 1 under the laws of State and elected to be treated as an S corporation effective Date 2. X's subsidiary, Y, incorporated on Date 3 under the laws of State and X elected to treat Y as a qualified subchapter S subsidiary (QSub) effective Date 3.

On Date 4, X, Y and a lender (“Lender”) entered into an agreement under which Lender agreed to acquire shares of Y. As a result of Lender’s acquisition of Y stock, Y’s QSub status terminated, as X was no longer the sole shareholder of Y. .

X represents that the above transactions were not motivated by tax avoidance or retroactive tax planning. During the years at issue, all tax returns for X were filed on Form 1120S. All relevant parties have treated X as an S corporation and Y as a QSub at all times. X, Y, and all shareholders of X and Y, agree to make any adjustments (consistent with the treatment of X as an S corporation and Y as a QSub) that the Secretary may require.

Section 1361(a)(1) of the Code defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(3)(B) defines a QSub as any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) 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 paragraph (2) or (3) of § 1362(d), (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 circumstances resulting in such 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.

Based solely on the information submitted and the representations made, we conclude that Y’s QSub election terminated on Date 4, the date Lender acquired shares of Y. We also conclude that this termination was inadvertent within the meaning of § 1362(f), and that under the provisions of § 1362(f), Y will be treated as a QSub from Date 4, and thereafter, provided that X’s S election was valid and was not otherwise terminated and that Y’s QSub election was valid and not otherwise terminated.

This ruling is conditioned on X and Y taking the corrective action of reversing Lender’s acquisition of shares in Y within 120 days of the date of this letter. X will be

treated as the sole shareholder of Y from Date 4 and thereafter. If this corrective action is not taken, then this ruling is null and void.

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, no opinion is expressed on whether Y was otherwise eligible to be treated as a QSub.

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.

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures: (2)

Copy of this letter
Copy for § 6110 purposes