

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

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, ID No.

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Refer Reply To:  
CC:PSI:B01  
PLR-132422-12  
Date:  
January 08, 2013

### Legend

X =

A =

State =

Date1 =

Date2 =

Date3 =

Date4 =

y =

z =

Dear :

This responds to a letter dated July 16, 2012, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

### FACTS

The information submitted states that X was incorporated under the laws of State on Date1. On Date2, X's Board of Directors adopted a Plan of Recapitalization providing for y shares of voting Class A Common Stock with a par value of \$z and y shares of non-voting Class B Common Stock with no par value. The Plan of Recapitalization also provided the Class A shares with preferential rights on liquidation.

A has owned 100% of the outstanding shares of both classes of stock since Date3 and is entitled to all of the corporation's assets on liquidation.

X elected to be treated as an S corporation effective Date4, while it had two classes of stock outstanding. After discovering the invalidity of the S election, X amended its Certification of Incorporation to eliminate the Class A share's preferential rights on liquidation and to provide that the only difference between the two classes of stock is that Class A is voting stock and Class B is non-voting stock.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and were not motivated by tax avoidance. X also represents that X and its shareholder have filed all returns consistent with X's status as an S corporation since Date4. X and its shareholder have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as 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 such year.

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

Section 1.1361-1(l)(1) of the Income Tax Regulations provides, in part, that a corporation that has more than one class of stock does not qualify as a small business corporation. Except as provided in § 1.1361-1(l)(4) (relating to instruments, obligations, or arrangements treated as a second class of stock), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds. Differences in voting rights among shares of stock of a corporation are disregarded in determining whether a corporation has more than one class of stock.

Section 1.1361-1(l)(2)(i) provides, in part, that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the governing provisions). Although a corporation is not treated as having more than one class of stock so long as the governing provisions provide for identical distribution and liquidation rights, any distributions (including actual, constructive, or deemed distributions) that differ in timing or amount are to be given appropriate tax effect in accordance with the facts and circumstances.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the 1st day of the 1st 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) or (3); (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; and (4) the corporation for which the termination occurred, and each person who was a shareholder in 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 termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's S corporation was ineffective for the taxable year beginning Date4. We further conclude that the circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date4, provided X's S corporation election was otherwise valid and has 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 other provisions of the Code.

Specifically, no opinion is expressed regarding X's eligibility to be treated as an S corporation.

This ruling is directed only to the taxpayer requesting 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

Laura C. Fields

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: