

**Internal Revenue Service**

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Person To Contact:  
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Telephone Number:

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Date:  
September 30, 2013

LEGEND

Company =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated April 22, 2013, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was incorporated under State law on Date 1. On Date 2, Company was actively engaged in negotiations to buy out a foreign corporation shareholder. Company's remaining shareholders were A and B, two individuals who qualified to be S corporation shareholders. Company elected to be an S corporation effective Date 3. The redemption agreement for the foreign corporation

shareholder was not signed, however, until Date 4, even though the parties intended for A and B to be the only shareholders of Company on Date 3. Therefore, between Date 3 and Date 4, Company had an ineligible S corporation shareholder and terminated inadvertently Company's S corporation election.

Company represents that for all years, Company and its eligible shareholders have filed all Federal income tax returns consistent with Company's S corporation election. In particular, Company treated A and B as its only shareholders for Company's tax year beginning Date 3. Company represents that the termination was not motivated by tax avoidance or retroactive tax planning. Company and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of Company as an S corporation.

### LAW AND ANALYSIS

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that 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 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in pertinent part, that if an election under § 1362(a) by any corporation 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, (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, 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, the corporation shall be treated as an S corporation during the period specified by the Secretary.

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company's S corporation election effective Date 3 was ineffective because Company had an ineligible shareholder. We also conclude that Company's ineffective S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), Company will be treated as an S corporation from Date 3 and thereafter, provided that Company's S corporation election was otherwise valid and was not terminated under § 1362(d).

Except as expressly provided herein, we express or imply no opinion concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Company is otherwise eligible to be an S corporation for Federal tax purposes.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representatives.

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.

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,

/s/

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: