



Dear :

This letter responds to a letter dated December 19, 2014, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

## FACTS

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation effective Date 1. On Date 2, A, the sole shareholder of X, contributed shares of X to Y, an S corporation, and Z, a partnership, ineligible S corporation shareholders under § 1361(b)(1)(B). As a result, X's S corporation election terminated on Date 2.

In Date 3, X learned that its S corporation election terminated on Date 2. After learning that X's S corporation election was terminated, X took corrective actions so that by Date 4, all of X's shareholders were eligible S corporation shareholders under § 1361(b)(1)(B). As part of the corrective actions, ineligible S corporation shareholders, Y, Trust 1 and Trust 2, momentarily held shares of X.

X represents that the termination of X's S corporation election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

## LAW

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, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

Section 1361(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part 1 of subchapter J of chapter 1 of the Code) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

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 part, that if (1) an election under § 1362(a) 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 § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances 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 the ineffectiveness or termination, the corporation will 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 X's S corporation election terminated on Date 2 because X had ineligible shareholders. However, we conclude that the termination on Date 2, and the ineligible shareholders' momentary ownership of shares in X as part of X's corrective action were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on and after Date 2, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provisions of the Code. Specifically, we express or imply no opinion as to whether X is otherwise eligible to be treated as an S corporation.

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.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code 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.

Sincerely,

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

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

cc: