

**Internal Revenue Service**

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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

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PLR-102118-15

Date:  
July 21, 2015

LEGEND

X =

Y =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Year =

n =

p =

Dear \_\_\_\_\_ :

This letter responds to a letter dated December 16, 2014 and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code ("Code").

## FACTS

The information submitted states that X was incorporated under the laws of State on Date 1, and elected to be an S corporation effective Year. On Date 2, A, an individual and sole owner of X stock, transferred n% of the shares of X stock to B, an individual, and p% of X stock to Y, an S corporation. Y was an ineligible S corporation shareholder under § 1361(b)(1)(B). Accordingly, X's S corporation election was terminated on Date 2. X and its shareholders were not aware that the transfer of X stock to Y would terminate X's S corporation election. On Date 3, B transferred all of his stock to Y. As 100% owner of X, Y could make a QSub election under § 1361(b)(3)(B).

X represents that X and its shareholders have filed tax returns consistent with X being an S corporation from Date 2 to Date 3. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

## LAW

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)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that 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 1362(d)(2) 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 a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by a 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 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 the representations made, we conclude that the termination of X's S corporation election on Date 2 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 2 to Date 3, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or the validity of its S corporation election.

This ruling is directed only to the taxpayer who requested 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.

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

Sincerely,

Richard Probst  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: