

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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PLR-123246-16
Date: January 10, 2017

LEGEND

X =

n =

m =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

Dear :

This letter responds to a letter dated July 18, 2016, 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 under the laws of State on Date 1. On Date 2, X filed an amendment to its Articles of Incorporation, specifically amending the Article IV ("Restated Article IV") to authorize n shares of Class A Voting

Common Stock, par value of \$m per share, and n shares of Class B Non-voting Common Stock, par value of \$m per share. Article IV immediately reclassified the outstanding capital stock as Class A Voting Common Stock and Class B Non-voting Common Stock. The Restated Article IV also provided that the Class B Non-voting Common Stock shall have preference in the payment of dividends by the corporation and the holders thereof shall be entitled to receive from the corporation annually a non-cumulative dividend equal to five percent of the net "after tax" profits of the corporation.

X elected be classified as an S corporation, effective Date 3. In Year, X became aware that the Class B Non-voting Common Stock created by the Restated Article IV created a second class of stock that caused X's S corporation election to be ineffective. On Date 4, X amended the Articles of Incorporation Article IV to add n shares of Class C Non-Voting Common stock with no voting rights and no preference in the payment of dividends. These Class C shares replaced the Class B Non-voting Common Stock.

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).

X requests a ruling that the ineffectiveness of X's S corporation election due to the existence of the Preferred Stock (Class B Non-voting Common Stock) was inadvertent within the meaning of § 1362(f) and that it will be treated as an S corporation from Date 3 and thereafter.

LAW

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 was ineffective on Date 3 as a result of X having more than one class of stock. We further conclude that such ineffectiveness was inadvertent within the meaning of § 1362(f).

X has taken corrective action so that it meets the requirements of a small business corporation under § 1361(b). Therefore, we determine that pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective Date 3 and thereafter, provided that X's S corporation election was otherwise valid and has 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 representatives.

Sincerely,

Bradford R Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy for § 6110 purposes