

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01

PLR-110655-17

Date:  
September 20, 2017

LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Shareholder 4 =

State =

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

This responds to a letter dated March 27, 2017, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

## FACTS

According to the information submitted and representations made within, X was formed and made a timely S corporation election effective Date 1, under the laws of State.

On Date 1, X's Articles of Incorporation authorized the issuance of common stock. On Date 1, X issued shares of common stock equally to two shareholders, Shareholder 1 and Shareholder 2.

On Date 2, X amended and restated its Articles of Incorporation to authorize the issuance of shares of preferred stock. The preferred stock provided for different rights with regard to dividends, preference in liquidation proceeds, certain conversion rights, and voting rights. On Date 2, X entered into a Stock Purchase Agreement with Shareholder 3 and Shareholder 3 purchased shares of the preferred stock. On Date 3, X entered into a Stock Purchase Agreement with Shareholder 4 and Shareholder 4 purchased shares of the preferred stock. On Date 4, X again amended and restated its Articles of Incorporation to authorize the issuance of additional shares of preferred stock and Shareholder 4 purchased additional shares of the preferred stock.

The issuance of the preferred stock on Date 2 created a second class of stock within the meaning of § 1361(b)(1)(D), causing X's S election to terminate effective Date 2. X's S election would have also terminated on Date 3 and Date 4 had it not already previously terminated.

X represents that in Year it became aware that the issuance of the preferred stock may have inadvertently terminated its S corporation election. X represents that on Date 5 it took corrective action and (1) entered into agreements with Shareholder 3 and Shareholder 4 to exchange their preferred stock for common stock; and (2) amended and restated its Articles of Incorporation to authorize only a single class of stock. X represents that as of Date 5 all issued and outstanding shares of preferred stock have been cancelled and retired. X also represents that its shareholders have taken into account their pro rate shares of X's separately and non-separately computed items pursuant to § 1366 and have made any adjustments to stock basis as required under § 1367. Furthermore, X represents that its shareholders have accounted for any distributions made under § 1368.

X represents that the termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that X and its shareholders filed returns consistent with X's status as an S corporation. Further, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that 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 the year. Section 1361(b)(1) defines a "small business corporation" as 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 1 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 1st day of the 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) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the 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 such corporation at any time during the period of inadvertent termination of the S election, 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 termination, the corporation is 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 circumstances represented by the taxpayer have caused an inadvertent termination of X's S corporation election within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

*Joy C. Spies*

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

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

cc: