

**Internal Revenue Service**

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Person To Contact:  
 , ID No.

Telephone Number:

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PLR-112403-21

Date:  
November 01, 2021

**LEGEND**

X =

State =

Date 1 =

Date 2 =

Spouse A =

Year 1 =

Spouse B: =

Dear :

This letter responds to a letter dated June 8, 2021, submitted on behalf of X by its authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted discloses that X was formed under the laws of State on Date 1 and made an election to be treated as an S corporation effective Date 2. On Date 2, X

was wholly owned by Spouse A. In Year 1, X learned that Spouse B and not Spouse A consented to X's S corporation election on its Form 2553, Election by a Small Business Corporation. Therefore, X's S corporation election was ineffective.

X represents that the circumstances surrounding X's ineffective S corporation election were inadvertent and unintended. X and its shareholder further represent that they have filed all returns consistent with X having a valid S corporation election in effect as of Date 2. X and its shareholder have agreed to make any adjustments that the Commissioner may require, consistent with treatment of X as an S corporation.

### 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(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(a)(2) provides that an S corporation election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(f) provides 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 paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such 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 such ineffectiveness

or termination, the corporation shall 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 X's S corporation election was ineffective on Date 2 because Spouse A failed to consent to X's S corporation election. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). Consequently, under § 1362(f), we rule that X will be treated as an S corporation from Date 2 and thereafter, provided, that X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on Spouse A signing a written statement as described in § 1.1362-6(b)(1) consenting to X's S corporation election effective Date 2. The written statement must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement is to be associated with X's originally filed Form 2553.

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a subchapter S corporation for federal income tax purposes.

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 on 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.

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

Sincerely,

/s/ Jennifer N. Keeney

Jennifer N. Keeney  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: