

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-126691-05

Date:
June 30, 2005

Legend

X =

State =

D1 =

D2 =

A =

B =

Trust =

Dear :

This responds to your letter dated, April 28, 2005 on behalf of X, requesting inadvertent invalid election relief under § 1362(f) of the Internal Revenue Code.

STATEMENT OF FACTS

According to the information submitted and representations therein, X incorporated under the laws of State on D1 and elected S corporation status effective D2. On D2, X had two classes of stock issued and outstanding. The preferred stock was held by A, B, and Trust.

X represents that its tax advisors were unaware that X had two classes of stock and further represents that its shareholders were unaware that the existence of two classes of stock prevented X from electing S corporation status. In addition, X represents that it has not treated the preferred stock as being issued and outstanding. When X discovered that it had two classes of stock issued and outstanding, X submitted this request for a ruling. As corrective action, X proposes to have A and B purchase the preferred stock held by Trust and convert all the preferred stock to common stock.

X represents that there was no intent to knowingly make an invalid S election and that the events that resulted in the invalid election were not motivated by tax avoidance or retroactive tax planning. X and its shareholders represent that they intended and treated X consistent with being an S corporation from D2 until present. X and each person who was a shareholder during the period that X intended to be an S corporation have consented to make any adjustments, consistent with the treatment of X as an S corporation, as may be required with respect to that period.

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 such year.

Section 1361(b)(1) defines “small business corporation” in relevant part as a domestic corporation that does not have more than one class of stock.

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(f), in relevant part, provides that if (1) an election to be treated as an S corporation 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); (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in such ineffectiveness, steps were taken so that the corporation is once more a small business corporation, 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 adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the terminating event, the corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.

CONCLUSION

Based upon the information submitted and the representations set forth above, we conclude that X's invalid S corporation election on D2 was inadvertent within the meaning of 1362(f).

Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter, provided that X's subchapter S election is not otherwise terminated under § 1362(d). In addition, this ruling is conditioned upon the completion of X's proposed corrective action.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above described facts under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

/s/ David R. Haglund

David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this Letter
Copy of Section 6110 purposes