

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

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Telephone Number:

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Date:

July 29, 2004

X =

LLC =

A =

B =

C =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter dated February 6, 2004 and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X is a corporation that elected to be treated as an S corporation effective D1. On D2 all of the shares of X were purchased by LLC. LLC is a limited liability company that is treated as a partnership for federal income tax purposes. LLC is owned by A, B, and C. A, B, and C did not realize that LLC's

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ownership of X stock would terminate X's S election. On D3 all the shares of X were distributed to A, B, and C.

X represents that the termination of X's election to be an S corporation was inadvertent, unintended, and not the result of tax avoidance or retroactive tax planning. X, A, B, and C agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

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(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or 1362(d)(3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is 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 under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts and the representations submitted, we conclude that X's S corporation election terminated on D2 under § 1362(d)(2), when shares of X were transferred to LLC, an ineligible shareholder. We further conclude that the termination of X's S corporation election was an inadvertent termination within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D2 to D3 provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d). During the period from D2 to D3, A, B, and C will be treated as the owners of the X stock. Therefore, the shareholders of X, must include their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

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Except as specifically ruled upon above, no opinion is expressed concerning the federal income 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) 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 X's authorized representative.

Sincerely,

Carolyn Hinchman Gray
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes