

## Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

November 17, 1999

### LEGEND

Company =

State =

d1 =

d2 =

A =

B =

C =

Dear

This letter responds to your letter dated July 13, 1999 on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

### FACTS

According to the information submitted, Company, a C corporation established under the laws of State, filed an election on d2 to be treated as an S corporation effective d1, the first day of its fiscal year. Its shareholders are A, B, and C. However, as of d1, Company was ineligible to be an S corporation due to a failure to timely file with State certain amendments to its articles of incorporation that were required to eliminate Company's second class of stock. Company filed those amendments with

State on d2, and currently has only one class of stock. Company and its shareholders agree to make any adjustments (consistent with the treatment of Company as an S corporation) that may be required.

### LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(D) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have more than one class of stock.

Section 1362(f) provides that if 1) an election under § 1362(a) by any 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 circumstances resulting in such ineffectiveness steps were taken so that the corporation is a small business corporation; and 4) the corporation and each person who was a shareholder in 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 such period, then, notwithstanding the circumstances resulting in such ineffectiveness, such corporation shall be treated as an S corporation during the period specified by the Secretary.

We conclude that Company's S corporation election was ineffective on d1 because Company had a second class of stock and, therefore, was not a small business corporation under § 1361(b) on d1. Furthermore, we rule that the ineffectiveness was inadvertent under § 1362(f). Under § 1362(f), Company will be treated as if it were an S corporation from d1 and thereafter, provided that its S election was otherwise valid and Company has not terminated under § 1362(d). During the period of ineffectiveness, for the purposes of this ruling, Company will be treated as if its amended articles of incorporation filed on d2 were effective on d1. Accordingly, all of the shareholders of Company, in determining their respective income tax liabilities during the period of ineffectiveness and thereafter, must include the pro rata share of the separately and nonseparately computed items of Company as provided in § 1367, and take into account any distributions made by Company as provided by § 1368. If Company, or any of Company's shareholders fail to treat Company as described above, this ruling shall be null and void.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express no opinion whether Company is

otherwise qualified to be an S corporation.

Under a power of attorney on file with this office, a copy of this letter is being sent to the taxpayer.

This ruling is directed only to the taxpayer requesting it. Under § 6110(k)(3), it may not be used or cited as precedent.

Sincerely Yours,

Jeff Erickson  
Assistant to the Branch Chief,  
Branch 3  
Office of the Assistant Chief  
Counsel  
(Passthroughs and Special  
Industries)

Enclosures (2)

Copy of this letter  
Copy for § 6110 purposes