

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

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### LEGEND

X =

A =

B =

C =

Partnership =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

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

This responds to a letter dated December 28, 2017, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

### Facts

According to the information submitted, X was formed under the laws of State on Date 1 as a limited liability company. X elected to be treated as an S corporation effective Date 2. On Date 3, all of the shares in X were transferred to Partnership, a partnership for federal tax purposes. Partnership, as a partnership, was an ineligible shareholder of an S corporation. On Date 4, X learned that the transfer of stock to Partnership terminated X's S election. On Date 5, X and its shareholders took remedial action by having Partnership transfer all of its shares in X to eligible S corporation shareholders A, B, and C. After Date 5, all income and other items from the X shares were allocated to A, B, and C. Between Date 3 and Date 5, all the partners of Partnership were eligible shareholders of an S corporation.

X represents that it did not intend for its S corporation election to terminate and that the events that resulted in the termination were not motivated by tax avoidance or retroactive tax planning. X represents that all shareholders filed their returns consistent with X being an S corporation. Further, X and its shareholders agree to make any adjustments required by the Secretary consistent with the 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 such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that 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 one class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever the corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under paragraph (2) or (3) of § 1362(d), (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 termination, 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 any 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 circumstances resulting in the termination, the corporation will be treated as continuing to be an S corporation during the period specified by the Secretary.

### Conclusion

Based solely on the information submitted and the representations made, we conclude that X's S election terminated on Date 3, when all of the shares of X stock were transferred to Partnership. We further conclude that the termination was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on and after Date 3, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d). Partnership will be treated as the shareholder of X from Date 3 until Date 5, at which point A, B, and C will be treated as the shareholders. Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make an adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is otherwise eligible to be treated as an S corporation.

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

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

Sincerely,

Laura C. Fields

Laura C. Fields  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

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