

## 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-130989-04

Date:

November 17, 2004

### Legend

X =

PRS =

State =

D1 =

D2 =

D3 =

D4 =

Dear :

This responds to a letter dated June 3, 2004, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

### Facts

According to the information submitted and representations therein, X was incorporated under the law of State on D1. On D3, PRS, a partnership owned by some of the shareholders of X, became a shareholder of X. Shortly thereafter, PRS was dissolved. On or about D4, X filed an election to be treated as a subchapter S corporation effective D2.

X represents that its invalid S corporation election was inadvertent, unintended, and not the result of tax avoidance or retroactive tax planning. X further represents that at all relevant times, X and its shareholders treated X as an S corporation. 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) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) 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) provides in part that (1) except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation, and (2) an election under § 1362(a) 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(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 that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made by reason of failure to meet the requirements of § 1362(b) or to obtain shareholder consents, or (b) was terminated under § 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 the 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 this subsection, 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 the termination, the corporation is 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 election to be treated as an S corporation as of D2 was invalid and also conclude that the invalid election constitutes an inadvertent invalid election within the meaning of § 1362(f). Under the provisions of § 1362(f), X will be treated as an S corporation as of D2 and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d).

This ruling is conditioned on X, within 60 days of the date of this letter, filing a new Form 2553, Election by a Small Business Corporation, with the appropriate service center with an effective date of D2.

Except as specifically provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax.

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.

Under a power of attorney on file in this office, a copy of this letter will be sent to your authorized representatives.

Sincerely,

/s/ David R. Haglund

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

Enclosures (2):

Copy of this letter, Copy for § 6110 purposes