

## Internal Revenue Service

Number: **200914013**  
Release Date: 4/3/2009  
Index Number: 1362.04-00

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-137231-08

Date:  
December 19, 2008

Legend:

X =

D1 =

D2 =

D3 =

Dear :

This responds to the letter dated July 25, 2008 and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

### Facts

According to the information submitted, X made an election to be treated as an S corporation in D1. On D2, an ineligible shareholder became a shareholder of X. In D3, the termination of the S election was discovered and steps were taken so that X is a small business corporation.

X and its shareholder agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

### 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 100 shareholders, (B) have as a shareholder a person (other than an estate, and a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to makes 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 representation made, we conclude that X's election to be treated as an S corporation terminated on D2. We also conclude that the termination constituted an “inadvertent termination” within the meaning of § 1362(f).

Under the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D2, and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d).

Except as expressly 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 purposes.

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 will be sent to X's authorized representative.

Sincerely,

*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

cc: