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:B02
PLR-131982-13
Date:
October 18, 2013

X   =

Date 1   =

Date 2   =

Date 3   =

Date 4   =

Date 5   =

Date 6   =

State   =

Y   =

Dear   :

       This responds to a letter dated July 9, 2013, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

       The information submitted states that X was formed on Date 1 as a State limited partnership. X was treated as a partnership for federal tax purposes from Date 1 through Date 2. Effective Date 3, X filed Form 8832, Entity Classification Election, electing to be treated as an association taxable as a corporation. The Service accepted this election. Also effective Date 3, X filed Form 2553, Election by a Small Business

Corporation, to be treated as an S corporation.   The Service did not accept this election because one of X's shareholders, Y, a corporation, was an ineligible S corporation shareholder. To remedy this problem, Y's shares in X were transferred to an eligible S corporation shareholder on Date 4.

In Date 5, X was further advised by its counsel that X's S corporation election may also have been invalid because was formed as a State limited partnership with the result that X may have more than one class of stock. To remedy this potential problem, X converted under State law to a State limited liability company in Date 6.

X represents that X and its shareholders did not intend to engage in tax avoidance or retroactive tax planning. X represents that the circumstances resulting in any ineffectiveness of X's election to be an S corporation were inadvertent. X represents that since Date 3, X and all of its shareholders, including Y, have not filed federal income tax returns inconsistent with X's S corporation election. X and each person who was or is a shareholder of X at any time since Date 3, agree to make such adjustments, consistent with the treatment of X as an S corporation, that the Secretary may require.

Section 1361(a)(1) of the Code 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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which 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(a) provides that, except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

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) or to obtain shareholder consents, (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 (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 in such corporation at any time during the period specified pursuant to § 1362(f), 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 such ineffectiveness, such corporation shall be treated as an S corporation during the period specified by the

Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election was ineffective on Date 3, because X had an ineligible shareholder. We also conclude that the election was inadvertently invalid under § 1362(f). Furthermore, X's S corporation election may have been ineffective on Date 3, because X was a State limited partnership at that time. We conclude that this possible ineffectiveness was also inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), X will be treated as being an S corporation from Date 3 and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
 Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
      Copy of this letter
      Copy for § 6110 purposes