Internal Revenue Service

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Department of the Treasury
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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B2
PLR-108815-13
Date: August 5, 2013

X =

State =

Y =

Z =

A =

D1 =

D2 =

D3 =

D4 =

Dear

This responds to a letter dated February 11, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. X, through its disregarded entity (DE) Z, acquired Y and elected to treat Y as a qualified subchapter S subsidiary (QSub)

effective D2. On D3, X executed a subscription agreement/promissory note in connection with a loan. As provided in the original promissory note, X issued stock to A, an ineligible S corporation shareholder for federal income tax purposes. Therefore, X's S corporation election and Y's QSub election terminated D3. Upon being informed that A was an ineligible S corporation shareholder, X caused the X stock held by A to be returned to X and revised the subscription agreement/promissory note on D4 in a manner not intended to constitute a second class of stock.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

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 it was 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, or (B) was terminated under § 1362(d)(2) or (3), (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 discovery of the event resulting in the 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 § 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 or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election and Y's QSub election were terminated on D3 because A was not an eligible shareholder of X. We also conclude that these terminations D3 were inadvertent within the meaning of § 1362(f). Therefore, we conclude that X will be treated as an S corporation from D3 and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). Furthermore, Y will be treated as a QSub from D3 and thereafter, provided that Y is otherwise eligible to be treated as a QSub.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding whether X otherwise qualifies as an S corporation, and Y otherwise qualifies as a QSub. In

addition, no opinion is expressed regarding whether the revised subscription agreement/promissory note creates a second class of stock under 1361(b)(1)(D).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

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