Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-104770-06
Date: December 06, 2006

LEGEND

X =

D1 =

D2 =

D3 =

State =

Dear :

This responds to your letter dated January 6, 2006, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State on D1. X elected to be treated as an S corporation effective D1. On D2, X was restructured in a series of transactions that were intended to qualify as a reorganization under § 368(a)(1)(F). X was intended to be converted into a general partnership in the restructuring. However, X was inadvertently converted into a limited partnership.

X elected to be treated as an association taxable as a corporation for federal tax purposes, effective D2. X represents that X and its shareholders always intended for X to continue to be an S corporation. On or around D3, it was discovered that X had been created as a limited partnership instead of a general partnership, which may have created a second class of stock. Upon discovery of this error, X was converted into a general partnership.

LAW AND ANALYSIS

Section 1362(a) generally provides that a small business corporation may elect to be treated as an S corporation.

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(f) provides that if (1) an election under § 1362(a) or § 1362(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (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 § 1361(b)(3)(C), (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 so that the corporation is a small business corporation or a QSub, or 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 of inadvertent ineffectiveness or termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a QSub) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation is treated as an S corporation or QSub during the period specified by the Secretary.

X represents that X and its shareholders did not intend to terminate X's S election, and that X was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as an S corporation with respect to the period specified by § 1362(f).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that if

X's conversion from a State corporation to a State limited partnership did create a second class of stock, the consequent termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation as of D2 and thereafter, provided that X's S corporation election is valid and not otherwise terminated under § 1362(d).

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 regarding whether X is otherwise a valid S corporation. In addition, no opinion is expressed as to whether X's restructuring qualifies as a reorganization under § 368(a)(1)(F).

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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