**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

Number: **200728028**
Release Date: 7/13/2007

Index Number: 1362.04-00

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:3 PLR-147018-06
Date:
April 04, 2007

Company =

A =

B =

State1 =

State2 =

LLC =

a =

b =

c =

d =

e =

f =

g =

Dear :

This letter responds to a letter dated September 29, 2006, and subsequent correspondence, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

Company was incorporated on a, under the laws of State1. Company elected under § 1362(a) to be treated as an S corporation effective on b. Company's current owners are A and B.

On c, pursuant to a plan of conversion, Company converted to a State1 limited partnership and made an election under § 301.7701-3 of the Administration and Procedure Regulations to be classified as an association taxable as a corporation. Upon the conversion, Company's limited partners were A and B, and Company's general partner was LLC, which was owned by A and treated as a disregarded entity. A, directly and through LLC, owned a d percent interest in Company and B owned an e percent interest. After its conversion, Company continued to be treated as an S corporation and conducted all activities consistent with that status.

In f, Company engaged a law firm in connection with exploring business alternatives. Upon a review of Company's organizational structure, the law firm determined and notified Company that its conversion to a State1 limited partnership on c, may have terminated Company's S corporation election. On g, to remedy the possible terminating event, Company converted to a State2 limited liability partnership and made an election under § 301.7701-3 to be classified as an association taxable as a corporation. Under State2 law, a limited liability partnership is a partnership formed under State2's version of the Revised Uniform Partnership Act. In addition, LLC distributed its interest in Company to A, so that A and B directly own all interests in Company. Company's limited liability partnership agreement provides for rights to distribution and liquidation proceeds based solely on ownership percentages in Company.

Company represents that neither A, B, nor LLC realized that Company's conversion to a State1 limited partnership taxable as a corporation could result in the termination of Company's S corporation election. In addition, Company represents that the possible terminating event was not motivated by tax avoidance or retroactive tax planning. Company, A, and B agree to make any necessary adjustments consistent with the treatment of Company as an S corporation.

LAW

Section 1361(b)(1)(D) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have, among other things, more than one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides, in part, that a corporation that has more than one class of stock does not qualify as a small business corporation. Except as provided in § 1.1361-1(l)(4), a corporation is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1362(d)(2)(A) provides that an election under § 1362(a) terminates whenever the corporation ceases to be a small business corporation.

For S corporation elections made and terminations occurring before January 1, 2005, § 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 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 the ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances 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 the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation shall be 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 Company's S corporation election may have terminated on c, if the conversion of Company to a State1 limited partnership created a second class of stock. In addition, we conclude that the possible termination was inadvertent within the meaning of § 1362(f). Consequently, we rule that Company will continue to be treated as an S corporation from c, and thereafter, provided Company's S corporation election is not otherwise terminated under § 1362(d).

Except for the specific ruling above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding Company's eligibility to be an S corporation.

Under a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representative.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Sincerely,

/s/

CHRISTINE ELLISON
Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

enclosures: copy of this letter
copy for § 6110 purposes

cc: