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-126512-08
Date:
November 07, 2008

X =

State =

A =

B =

LLC1 =

LLC2 =

LLC3 =

D1 =

D2 =

D3 =

D4 =

Year =

Dear :

This responds to a letter dated February 26, 2008, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

X incorporated under the laws of State on D1 and elected to be an S corporation effective D1. At the time of incorporation, X's shareholders were individuals A and B. On D2, LLC1 was created, and X converted to a State limited partnership. Upon the conversion, X's limited partners were A and B. X's general partner was LLC1, which was owned by A and B and treated as a partnership. After its conversion, X continued to be treated as an S corporation except for the filing of a Form 1065 for Year. A Form 1120S was subsequently filed for Year. In D3, X first became aware that as a result of the conversion, X terminated its S corporation election. To remedy the terminating event, a series of transactions were effectuated such that A and B became the limited partners of X and LLC2 and LLC3, with B and A as single members, respectively, became the general partners of X. To further remedy the terminating event, X represents that it will convert to a corporation under the laws of State by D4.

X represents that neither A nor B realized that X's conversion to a State limited partnership could result in the termination of X's S corporation election. In addition, X represents that the terminating event was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

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 made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1362(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 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 the ineffectiveness or termination, the corporation will 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 the termination of X's S corporation election terminated on D2, when LLC1 became the general partner of X and that it may have terminated on D2 if the conversion of X to a State limited partnership created a second class of stock. However, we conclude that the termination was inadvertent within the meaning of § 1362(f). Consequently, we rule

that X will be treated as continuing to be an S corporation from D2 and thereafter, provided X's S corporation was valid and provided that the election was not otherwise terminated under § 1362(d). This ruling is contingent upon X's conversion to a State corporation by D4.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of the facts described above under any other provision of the Code, including whether X is, in fact, an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who 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 representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes