Internal Revenue Service

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Person To Contact:
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Telephone Number:

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Date:
August 21, 2009

X =

Y =

State =

P =

Q =

R =

S =

A =

B =

C =

D =

E =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
n1 =

n2 =

n3 =

n4 =

n5 =

n6 =

Year 1 =
Year 2 =
Year 3 =

Dear :

This responds to a letter dated April 22, 2009, and prior correspondence, submitted on behalf of Y by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed under the laws of State on Date 1. X made an election to be treated as an S corporation effective Date 1. On Date 2, A, B, and C, the owners of X, contributed all of their interests in X to Y in exchange for all of the outstanding interests in Y, which was formed under the laws of State on Date 2 and for which an S corporation election under § 1362(a) was made effective Date 2. As a result, X became wholly owned by Y.

On Date 2, following the contributions, P, Q, R, and S were merged with and into X under the laws of State, with X surviving the merger. The owners of P, Q, R, and S each received an interest in X in exchange for their interests in P, Q, R, and S, respectively. As a result, X was owned as follows: n1% by Y; n2% by A; n2% by B; n3% by C; n4% by D; and n1% by E.

On or about Date 3, Y made elections to be treated as an S corporation and to treat X as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B), both effective as of Date 2. X and Y represent that the contributions by A, B, and C of their interests in X to Y, together with a valid election under § 1361(b)(3)(B) for X, meet the requirements of § 368(a)(1)(F).

Y filed Forms 1120S, U.S. Income Tax Return for an S Corporation, for Year 1, Year 2, and Year 3. X and Y subsequently discovered that X's S election had terminated on Date 2 due to the fact that X had an ineligible shareholder, Y. X and Y also realized at that time that X did not qualify as a QSub due to the fact that X was not wholly owned by Y. X filed a Form 1120S for Year 1, which included its items of income, loss, deduction, and credit for all of Year 1. On the advice of counsel, X filed Forms 1065, U.S. Return of Partnership Income, for Year 2 and Year 3.

As corrective action, A, B, C, D, and E contributed their interests in X to Y in exchange for interests in Y on Date 4. As a result, X became wholly owned by Y and Y was owned as follows: n5% by A; n5% by B; n6% by C; n4% by D; and n1% by E.

X and Y represent that the termination of X's S election and X's ineffective election as a QSub were not motivated by tax avoidance or retroactive tax planning. X, Y, and their shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as a QSub effective Date 2 and of Y as an S corporation effective Date 2.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) 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 § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (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 representations made, we conclude that X's ineffective election as a QSub on Date 2 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as a QSub from Date 2 and thereafter, provided X's QSub election was valid and provided that the election was not otherwise terminated under § 1361(b)(3)(C).

This ruling is conditioned upon X, Y, and Y's shareholders filing any amended returns for Year 2 and subsequent taxable years, and making such adjustments, as necessary, consistent with X's status as a QSub effective Date 2, within 75 days from the date of this ruling. A copy of this letter must be attached to any return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. If X, Y, or Y's shareholders fail to satisfy this condition, this ruling is null and void.

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. Specifically, no opinion is expressed or implied as to whether Y is an S corporation or whether X meets the requirements as a QSub.

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 Y'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

cc: