Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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CC:PSI:B02
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Date:
January 22, 2010

LEGEND

X =

A =

B =

State =

Court =

D1 =

D2 =

D3 =

Dear :

This responds to a letter dated January 8, 2010 submitted on behalf of X by its authorized representative, requesting a ruling that X's subchapter S election did not terminate on D2.

The information submitted states that X was incorporated in State on D1. X made an election to be treated as an S corporation effective D1. As part of X's formation, X's founding shareholders, which included A, executed a Shareholders' Agreement. Under this agreement, a shareholder desiring to transfer shares of X must (i) obtain the

consent of the other shareholders prior to transfer, (ii) the transferee must become a party to the agreement, and (iii) no transfer is allowed if the transfer would result in the termination of X's S corporation status.

On D2, A attempted to transfer a portion of his shares in X to B, which is not an eligible S corporation shareholder. On D3, Court entered an order holding that the attempted transfer of A's shares in X to B was null and void and that A remained the record and legal owner of all of the shares A attempted to transfer to B.

Section 1362(a) of the Internal Revenue Code provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Sections 1362(d)(2)(A) provides that an S election terminates whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Based solely on the facts and representations submitted, because A's transfer of X shares to B was void ab initio under State law as determined by Court, we conclude that X's S corporation election did not terminate on D2. Accordingly, as B was never a shareholder of X, X will be treated as continuing to be an S corporation from D2, and thereafter, provided X's S corporation election was valid, and has not otherwise terminated under the provisions of § 1362(d).

X and all its current and prior shareholders must treat X as having been an S corporation for the period from D2 to the present. In addition, X and its shareholders must treat A as having been the shareholder of the X shares which A attempted to transfer to B and amend any prior tax returns that are inconsistent with this treatment. Any amended returns required under this paragraph must be filed within 60 days of the date of this ruling or it will be null and void. A copy of this letter must be attached to any such returns.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b) of the Code.

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 X's authorized representatives.

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