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Person To Contact:

Telephone Number:

Refer Reply To:
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Legend

X =

Y =

Z =

State =

Country =

D1 =

D2 =

D3 =

D4 =

Dear

This responds to a letter dated August 27, 2010, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and made an election to be treated as a subchapter S corporation effective D2.

On D3, X formed Y, a wholly-owned subsidiary, under the law of Country which caused X to become a member of an affiliated group under § 1504. At the time of Y's formation, a corporation that was a member of an affiliated group was an ineligible corporation under § 1361(b)(2)(A). As a result, X's subchapter S election terminated under § 1362(d)(2) on D3 when Y was formed. On D4, X formed Z, a wholly-owned subsidiary, under the law of Country and X's S corporation election would have terminated under § 1362(d) had the election not already terminated on D3.

X represents that the termination of X's S election was inadvertent and 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 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 section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a small business corporation, in part, as a domestic corporation which is not an ineligible corporation.

Section 1361(b)(2)(A), as in effect for taxable years beginning on or before December 31, 1996, provided that for purposes of § 1361(b)(1), the term "ineligible corporation" means any corporation that is a member of an affiliated group (determined under § 1504 without regard to the exceptions contained in § 1504(b)). However, effective for taxable years beginning after December 31, 1996, the term ineligible corporation no longer includes a corporation that is a member of an affiliated group.

Section 1362(d)(2)(A) provides that an S election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation. The termination is effective on and after the day of the termination.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation, and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified under § 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 such period, then, notwithstanding the

circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the information submitted and the representations made, we conclude that X's S corporation election under § 1362(a) was terminated when X formed Y. We also conclude that this termination of X's S election on D3 was an inadvertent termination within the meaning of § 1362(f). Moreover, had X's S corporation election not already terminated, it would have terminated on D4. Similarly, this termination of X's S election on D4 would have been an inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from D3 and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

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. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, we express no opinion regarding the liability of X or its shareholders for any tax or penalty as determined in any examination or other proceeding.

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

Pursuant to a power of attorney on file with this office, 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 section 6110 purposes

cc: