

Internal Revenue Service

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Person To Contact:
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Telephone Number:

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Date:
February 25, 2015

LEGEND

X =

Date 1 =

Date 2 =

State =

Dear :

This responds to a letter signed November 12, 2014, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code) for an inadvertent invalid S election.

FACTS

According to the information submitted and representations made within, X was incorporated on Date 1 under the laws of state. On Date 2, X made an S election effective Date 1. X's S election contained errors that may have invalidated the election.

X represents that the possible ineffectiveness of its S election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X also represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent invalid election rule as provided under § 1362(f) of

the Code that may be required by the Secretary. X and its shareholders represent that they have filed all returns consistently X with being an S corporation.

LAW AND ANALYSIS

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 the year. Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1362(a)(2) provides, that an election under this section shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1.1362-6(a)(2) provides that a small business corporation makes an election under section 1362(a) to be an S corporation by filing a completed Form 2553. The election form must be filed with the service center designated in the instructions applicable to Form 2553. The election is not valid unless all shareholders of the corporation at the time of the election consent to the election in the manner provided in paragraph (b) of this section. However, once a valid election is made, new shareholders need not consent to that election.

Section 1.1362-6(a)(2)(ii)(C) provides, in relevant part, that the taxable year of a new corporation begins on the date that the corporation has shareholders, acquires assets, or begins doing business, whichever is the first to occur. The existence of incorporators does not necessarily begin the taxable year of a new corporation.

Section 1.1362-6(b)(1) provides, in relevant part, that a shareholder’s consent required under paragraph (a) of this section must be in the form of a written statement that sets forth the name, address, and taxpayer identification number of the shareholder, the number of shares of stock owned by the shareholder, the date (or dates) on which the stock was acquired, the date on which the shareholder’s taxable year ends, the name of the S corporation, the corporation’s taxpayer identification number, and the election to which the shareholder consents. The statement must be signed by the shareholder under penalties of perjury. The election is not valid if any required consent is not filed in accordance with the rules contained in this paragraph (b). The consent statement should be attached to the corporation’s election statement.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any

corporation was not effective for the taxable year for which made by reason of a failure to meet the requirements of § 1361(b), (2) the Secretary determines that the circumstances resulting in the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation, and (4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified by § 1362(f), agrees to makes 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, the corporation is 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 X's S corporation election may have been ineffective. We further conclude that, if the election was ineffective, the ineffectiveness was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 1 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

This ruling is contingent on X filing a corrected Form 2553, Election by a Small Business Corporation, with the appropriate service center, within 120 days from the date of this letter, effective Date 1. A copy of this letter should be attached to the election.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

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

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes