

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B01-PLR-168321-02

Date:

January 17, 2003

Legend

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This responds to the letter dated December 9, 2002, and additional correspondence, submitted on behalf of X, requesting a ruling under 1362(f) of the Internal Revenue Code.

Facts

X was organized in Date 1 and elected to be treated as an S corporation effective Date 2. Prior to filing the election to be treated as an S corporation X had one class of common stock and three classes of preferred stock. Prior to Date 2 X redeemed all of the outstanding shares of the three classes of preferred stock. In Date 3 an attorney for one of X's shareholders informed X that X's certificate of incorporation authorized, and that X had issued, and had outstanding, a second class of common stock that provided different rights upon liquidation than the first class of common stock. On Date 4 X's board of directors adopted a resolution to amend the certificate of incorporation to eliminate any distinction between the first and second classes of common stock. X and its shareholders then requested inadvertent invalid election relief under 1362(f) of the Code.

PLR-168321-02

X represents that there was no intent to knowingly make an invalid S election and that the events that resulted in the invalid election were not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as 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 such 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 75 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 one class of stock.

Section 1362(f) provides, in relevant part, that if (1) an election under 1362(a) by any corporation 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, (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in ineffectiveness, steps were taken so that the corporation is once more a small business corporation, 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 any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.

### Conclusion

Based solely on the information submitted and the representations made, we conclude that X's invalid subchapter S election, as described above, was inadvertent within the meaning of 1362(f). Therefore, X will be treated as an S corporation from Date 2 and thereafter provided that X's S election is not otherwise terminated under 1362(d).

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the above-described facts under any other provision of the

PLR-168321-02

Code. Specifically, no opinion is expressed on whether X is otherwise eligible to be treated as an S corporation.

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 with this office, a copy of this letter is being forwarded to the taxpayer.

Sincerely,

**/s/ David R. Haglund**

David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of the Assistant Chief Counsel  
(Passthroughs and Special Industries)

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