

Dear _____ :

This letter responds to a letter dated April 7, 2016, and subsequent correspondence, submitted on behalf of Y, requesting a ruling for X under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated in State on Date 1 and elected to be treated as an S corporation. On Date 1, the shareholders of X were A and B. However, B failed to consent properly to X's S corporation election. Accordingly, X's S corporation election was ineffective.

On Date 2, A purchased all of B's shares of X. On Date 4, Z purchased all of the shares of X from A. If the election of S corporation status for X had been effective, then the purchase of X shares by Z would have terminated X's S corporation status because Z was an ineligible shareholder. On Date 5, X merged into Y with Y surviving.

As X's successor, Y represents that the circumstances resulting in the invalidity of X's S election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Y also represents that, the U.S. federal income tax returns of X and its shareholders have been filed for all relevant periods consistent with X having a valid S corporation election in effect as of Date 1. Y and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

LAW

Section 1362(a)(2) provides that an S corporation election 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)(i) provides that an S 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 1.1362-6(b).

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 (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 the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, 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, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was ineffective as a result of the improper consent to X's S election. We also conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as having been an S corporation from Date 3 to Date 4 provided that X's S corporation election is not otherwise invalid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X was otherwise eligible to be treated as an S corporation.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

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

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: