

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201801004**  
Release Date: 1/5/2018

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 1362.00-00, 1362.01-01

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-113445-17  
Date:  
October 10, 2017

LEGEND

X =

Sub =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This responds to a letter dated April 18, 2017, and supplemental correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

Facts

According to the information submitted and representations made within, X was formed and made an S election effective Date 1, under the laws of State. Sub was formed under the laws of State on Date 2. On Date 3, X acquired all of the outstanding equity interests of Sub from the prior owner of those interests.

X's S corporation election was ineffective because X failed to obtain all required shareholder consents to the election. Additionally, X represents an amendment to its operating agreement on Date 4 created a second class of stock. X represents that it has amended its operating agreement to correct all second class of stock issues.

X elected to treat Sub as a Qualified Subchapter S Subsidiary (Qsub) effective Date 3. Because X's S corporation election was ineffective, X's election to treat Sub as a Qsub was also ineffective.

X represents that the invalidity of its S election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that all of X's distributions to shareholders have been pro rata in accordance with their ownership interests. 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) that may be required by the Secretary. X and its shareholders represent that they have filed all returns consistently with X being an S corporation and Sub being a Qsub.

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

Section 1362(f) provides that if (1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred,

and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be 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 and X's election to treat Sub as a Qsub were ineffective on Date 1 and Date 3, respectively. We further conclude that the ineffectiveness of X's S corporation election and Sub's Qsub election constituted inadvertent invalid elections 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 otherwise valid and is not otherwise terminated under § 1362(d). Furthermore, Sub will be treated as a Qsub of X from Date 4 and thereafter, provided that Sub's Qsub election was otherwise valid and not otherwise terminated under 1361(b)(3)(C).

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the code, including whether X was otherwise a valid S corporation and whether Sub was otherwise a valid Qsub.

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*

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Laura C. Fields  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: