

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Date:  
March 20, 2019

X =  
  
State =  
D1 =  
D2 =  
D3 =  
D4 =  
Y =

Dear :

This responds to a letter dated November 19, 2018, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State on D1, and filed an election to be an S corporation effective D2. On D3, X learned that the Service could not accept its S corporation election because one of its shareholders, Y, was a limited partnership and therefore not an eligible S corporation shareholder. This rendered X's S corporation election ineffective. On D4, all of the shares owned by Y were transferred to eligible S corporation shareholders.

X represents that the circumstances resulting in X's ineffective S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

### 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) provides that the term “small business corporation” means 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 one class of stock.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) 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 event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required 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 such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(b) of the Income Tax Regulations provides that the determination of whether an invalid S corporation election was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the invalid election was inadvertent. The fact that the invalidity of the election was not reasonably within the control of the corporation or the fact that the circumstances took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such circumstance, tends to establish the invalidity of the election was inadvertent.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective because Y was an ineligible S corporation shareholder. We conclude, however, such ineffectiveness was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter, provided that X's election was not otherwise ineffective or terminated under § 1361(b) or § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of any transaction described above under any other provisions of the Code.

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.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2  
Copy of this letter  
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