Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:2 - PLR-109825-00
Date:
September 7, 2000

X =

A =

B =

C =

D =

E =

F =

G =

H =

D1 =

D2 =

Dear :

This letter responds to your letter dated April 18, 2000, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X is a corporation incorporated on D1. X elected to be an S corporation effective D2. The current shareholders of X are A, B, C, D, E, F, G, and H. D and E hold their shares in joint tenancy. However, E, a shareholder on D2, the effective date of the S election, failed to sign the Form 2553, Election by a Small Business Corporation. Therefore, E never consented to the X's election to be an S corporation. A, the president of X, represents that when filing its income tax returns, X filed Form 1120S, U.S. Income Tax Return for an S corporation, and X's shareholders filed Form 1040, U.S. Individual Tax Return, consistent with X being an S corporation.

X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may

be required by the Secretary.

A represents that the circumstances resulting in the invalidity of X's S corporation election were inadvertent. A further represents that X and its shareholders did not use hindsight in requesting relief.

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 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 1362(a)(2) provides that an election under § 1362(a) 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(b)(1) of the Income Tax Regulations provides that except as provided in § 1.1362-6(b)(3)(iii), the election of the corporation is not valid if any required consent is not filed in accordance with the rules contained in § 1.1362-6(b).

Section 1362(f) provides 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, or was terminated under paragraph (2) or (3) of § 1362(d), (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 so that the corporation is a small business corporation, or to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agree 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 or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the representations made and the information submitted, we conclude that X's S corporation election was

invalid under § 1362(d)(2) of the Code because E, a shareholder of X failed to consent to X's S corporation election.

We conclude that the invalidity of X's S corporation election was inadvertent within the meaning of § 1362(f) of the Code. Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective D2 and thereafter, provided X's election to be an S corporation was not otherwise invalid and was not terminated under § 1362(d). Accordingly, X's shareholders, in determining their federal tax liability, must include their pro rata share of the separately and nonseparately computed items of X under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by X to shareholders under § 1368. If X or its shareholders fail to treat X as described above, this ruling shall be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. This ruling letter 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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X.

Sincerely yours,
J. THOMAS HINES
Acting Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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