

Internal Revenue Service

Department of the Treasury

Number: **200334014**
Release Date: 8/22/2003
Index Number: 1362.04-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:PSI:1-PLR-169439-02
Date:
May 8 2003

Legend:

X =

Y =

A =

B =

C =

D =

a =

State =

D1 =

D2 =

D3 =

Dear _____ :

This responds to your letter, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

PLR-169439-02

Facts

X was incorporated in State in D1. X made an S election effective D2. On D3, the shareholders of X (A, B, C, and D) formed Y, a limited partnership, and each of the shareholders contributed a shares of X stock to Y.

All shares of X stock contributed to Y have been distributed back to the shareholders of X, each shareholder receiving a shares. 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 with respect to the period specified by § 1362(f).

Law and Analysis

Section 1361(a)(1) defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) 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 the corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period of inadvertent termination of the S election, 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 termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Conclusions

Based solely on the facts submitted and representations made, we conclude that the termination of X's S election resulting from the contributions of the shares of X stock to Y constitutes an inadvertent termination within the meaning of § 1362(f). Accordingly, under the provisions of § 1362(f), X will be treated as being an S corporation from D3 and thereafter, provided that X's S election was otherwise valid

PLR-169439-02

and has not otherwise terminated under § 1362(d).

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a valid S corporation.

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, a copy of this letter is being forwarded to your authorized representative.

Sincerely,

/s/ Dianna K. Miosi

Dianna K. Miosi
Chief, Branch 1
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure:

Copy of this letter
Copy for § 6110