

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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Date:

July 26, 2004

Legend

X =

P =  
A =

State =  
D1 =  
D2 =  
D3 =  
D4 =  
D5 =  
Y1 =  
Y2 =  
Y3 =

Dear \_\_\_\_\_ :

This responds to the letter dated October 21, 2003, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

X was incorporated on D1 under the laws of State and elected to be treated as an S corporation effective the same date. On D2, A formed P, an ineligible S corporation shareholder. In years Y1, Y2, and Y3, A purchased shares of X. On D3,

upon A's request, the S corporation shares were issued in the name of P. In D4, X discovered that P held some of the shares of X stock. To rectify the situation, X cancelled the shares issued in the name of P and reissued them in the name of A on D5.

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); (2) the Secretary determines that the circumstances resulting in the termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is once more a small business corporation; and (4) the corporation, and each person who was a shareholder in the corporation at any time during the period specified pursuant to this subsection, 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 shall 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 the termination of X's S election resulting from the issuance of the shares of X stock to P 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 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 provisions of the Code. Furthermore, 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)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes