

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:3  
PLR-156649-04  
Date: February 10, 2005

LEGEND

Company =

State =

Business =

LLC =

Group =

a =

b =

c =

d =

e =

f =

g =



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

This letter responds to a letter dated October 18, 2004, and additional correspondence, submitted on behalf of Company, requesting a ruling under ' 1362(f) of the Internal Revenue Code.

According to the information submitted, Company was incorporated in State on a, and engages in Business. Company filed an election under ' 1362(a) to be treated as an S corporation effective as of b.

On d, Company issued c shares of Company stock to LLC, and Company issued an additional e shares to LLC during the remainder of f. LLC, a disregarded entity, is an ineligible shareholder wholly owned by Group, an S corporation. As a consequence of the transfers, Company's S corporation election terminated on d, the date of the first transfer of Company stock to LLC.

The termination of Company's S corporation election was not discovered until Company engaged counsel in an unrelated corporate matter. To correct the terminating event, LLC distributed the shares of Company stock to the shareholders of Group, represented as eligible shareholders, on g.

Company represents that the termination of its S corporation election was inadvertent and unintended. In addition, Company represents that it and its shareholders have filed consistent with being an S corporation since d. Finally, Company and its shareholders agree to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Service.

#### Law

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)(B) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 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(d)(2)(A) provides that an election under § 1362(a) terminates 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) or (3); (2) the Secretary determines that

the circumstances resulting in 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 of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.

### Conclusion

Based solely on the information submitted and the representations made, we conclude that the transfer of Company stock to LLC terminated Company's S corporation election. We also conclude that the termination of Company's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), Company will be treated as continuing to be an S corporation from d, and thereafter, provided Company's S corporation election was valid and not otherwise terminated under § 1362(d). The shareholders of Group to whom the shares of Company stock were distributed on g, will be treated as the owners of those shares during the period the shares were held by LLC. Therefore, the shareholders of Company, in determining their federal tax liability during the period from d, and thereafter, must include their pro rata shares of separately and nonseparately computed items of Company as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account any distributions made by Company to the shareholders as provided in § 1368.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the above-described facts under any other provision of the Code. Specifically, no opinion is expressed or implied on whether Company is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 Company=s authorized representative.

Sincerely yours,

*/s/*

MARY BETH COLLINS  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: