Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date:

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Legend

X =

Date 1 =

Date 2 =

State =

This responds to a letter dated September 28, 1998, submitted on behalf of X requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

X elected to be treated as an S corporation effective Date 1. As of Date 1, however, X was ineligible to be an S corporation solely due to a failure to file with State certain amendments to X's articles of incorporation that were required to eliminate X's second class of stock. Those amendments to X's articles of incorporation were filed with State on Date 2. All of the shareholders of X have consented to any adjustments (consistent with the treatment of X as an S corporation) as may be required.

LAW AND ANALYSIS

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under section 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(f) provides that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made by reason of a failure to meet the requirements of section 1361(b), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, 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 ineffectiveness 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 ineffectiveness, the corporation is treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the representations made, we conclude that X was ineligible to elect to be an S corporation as of Date 1. We also conclude that the circumstances resulting in the ineffectiveness of X's S election were inadvertent. Therefore, X will be treated as an S corporation effective Date 1 and thereafter, provided X's S corporation election is not otherwise terminated and provided the shareholders of X make any required adjustments.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described under any other provision of the Code. In particular, no opinion is expressed as to whether X made an otherwise valid subchapter S election under section 1362.

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. As provided by a power of attorney on file in this office, a copy of this letter is being sent to your

authorized representative.

Sincerely yours,

DAVID R. HAGLUND
Senior Technician Reviewer
Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
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