

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective Date 2. X has been the sole shareholder of Y stock at all times since Date 2. X elected to treat Y as a qualified subchapter S subsidiary (QSub) effective Date 2.

On Date 3, X's Articles of Incorporation were amended to authorize the issuance of preferred stock to A in exchange for A's contribution of money. The preferred stock had preferential distribution and liquidation rights over the common stock. On Date 4, X's Articles of Incorporation were amended to authorize the issuance of perpetual preferred stock to A in exchange for A's contribution of money. The perpetual preferred stock had preferential distribution and liquidation rights over the common stock.

X inadvertently terminated its S corporation election on Date 3 by issuing a second class of stock. On Date 5, X took corrective action by amending its Articles of Incorporation to eliminate the preferred stock and perpetual preferred stock and create non-voting common stock.

X represents that no distributions of cash or other property have ever been made by X with respect to the preferred stock and perpetual preferred stock. X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation, as might be required by the Secretary.

LAW AND ANALYSIS

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation was terminated under § 1362(d)(2) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation or a QSub, as the case may be, and (4) the corporation for which the termination occurred, and each person who was a shareholder of such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election and Y's QSub election terminated on Date 3. We also conclude that the termination of X's S corporation election and Y's QSub election was inadvertent within the meaning of § 1362(f). Therefore, we conclude that X will be treated as an S corporation from Date 3 and thereafter, provided X's S corporation election is otherwise valid and is not otherwise terminated under § 1362(d). In addition, Y will be treated as a QSub of X from Date 3 and thereafter, provided that Y is otherwise eligible to be treated as a QSub.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be an S corporation, or whether Y is otherwise eligible to be a QSub.

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.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Stacy L. Short
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
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cc: