

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201530016**
Release Date: 7/24/2015
Index Number: 1362.04-00

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:PSI:B03
PLR-143030-14
Date:
February 12, 2015

LEGEND

X =

Y =

State1 =

State2 =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to a letter dated November 19, 2014, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X is a successor corporation to Y, which was organized under the laws of State1 on D1 and elected to be an S corporation effective D2. X was organized under the laws of State2 on D3 and elected to be an S corporation effective D4. Between D3 and D4, Y had an ineligible shareholder and its S corporation election terminated. As a result, X's election on D4 to be an S corporation was invalid.

X and Y represent that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that X and its shareholders have filed consistently with the treatment of X as an S corporation since D4. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

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) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 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) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, 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 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 (A) 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 specified pursuant to § 1362(f), 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 will be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(b) provides, in relevant part, that for purposes of § 1.1362-4(a), the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation or was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination was inadvertent.

Section 1.1362-4(d) provides, in part, that the Commissioner may require any adjustments that are appropriate. In general, the adjustments should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Section 1362(g) provides that, if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Y's S corporation election terminated on D3, and therefore X's S corporation election on D4 was invalid. We also conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), Y will be treated as an S corporation from D3 to D4, and X will be treated as an S corporation from D4 and thereafter, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer that requested 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 copies of this letter to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: