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Person To Contact:
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CC:PSI:BO1
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Date:
December 02, 2015

LEGEND

X =

Y =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear :

This responds to a letter dated June 30, 2015, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations made within, X was incorporated on Date 1, under the laws of State, a community property state, and made a valid S election effective Date 2.

On Date 3 all of the shares of X were transferred to Y. Y was formed on Date 3 under the laws of State and is wholly owned by A and B, a husband and wife as community property. Y was treated as a partnership for income tax purposes.

On Date 4, X discovered that Y is an ineligible shareholder that caused X's S election to termination effective Date 3.

X represents that if its S corporation election terminated it was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X also represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary. X further represents that X and its shareholders have filed consistently with X continuing to be a valid S corporation.

LAW AND ANALYSIS

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 the year. Section 1361(b)(1) defines a "small business corporation" as 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 subsection (c)(2), or an organization described in subsection (c)(6)) 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 (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time

during the period of inadvertent termination of the S election, agrees to makes 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.

Rev. Proc. 2002-69, 2002-2 C.B. 831, provides guidance on the classification of a business entity owned by a husband and wife as community property. If the husband and wife treat a qualified entity as a disregarded entity for federal income tax purposes, the Service will respect that treatment. If the husband and wife treat a qualified entity as a partnership for federal income tax purposes and file the appropriate partnership returns, the Service will respect that treatment. A change in reporting position will be treated as a conversion of the entity. A business entity is a qualified entity if (1) it is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or a possession of the United States; (2) no person other than one or both spouses would be considered an owner for federal tax purposes; and (3) the business entity is not treated as a corporation under § 301.7701-2.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 3 because X had an ineligible shareholder. However, we conclude that the termination was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 3 and thereafter, provided that Y, and A and B, treat Y as a disregarded entity for federal income taxes for all open taxable years and X's S corporation election is not otherwise terminated under § 1362(d).

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an 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, we are sending a copy of this letter to your authorized representative.

Sincerely,

David R. Haglund
David R. Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy of this letter for section 6110 purposes

cc: