

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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Telephone Number:

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Date: January 3, 2017

LEGEND

X =

State =

Y =

D1 =

D2 =

D3 =

D4 =

Dear :

This letter responds to a letter dated June 27, 2016, and subsequent correspondence submitted on behalf of X requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was formed under the laws of State and elected to be treated as a subchapter S corporation effective D1. Prior to D2, X's shareholders were trusts that X represents are eligible S corporation shareholders. On D2, an unrelated S corporation, Y, acquired shares of stock in X. Because Y is an ineligible S corporation shareholder, X's S corporation election terminated on D2. In D3, X learned that Y is not an eligible S corporation shareholder and its S corporation election terminated on D2. On D4, the trusts transferred their X stock to Y in exchange for Y stock. Y plans to elect under § 1361(b)(3) to treat wholly owned X as a qualified subchapter S subsidiary (QSub) effective D4.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments, consistent with the treatment of X as an S corporation, as may be required by the Commissioner.

LAW AND ANALYSIS

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

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, 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 ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the termination of X's S corporation election on D2 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D2 to D4, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's 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,

/s/

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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