

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-118846-19

Date:
February 7, 2020

Legend

- X =
- Shareholder 1 =
- Shareholder 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- State =

Dear :

This responds to a letter dated July 30, 2019, and supplemental correspondence submitted on behalf of X by X's authorized representatives, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted and representations made, X was incorporated under the laws of State on Date 1. Shareholder 1 purchased the stock of X using funds from Shareholder 1's IRA on Date 2. Instead of taking a distribution from the IRA and using the funds to purchase the shares, Shareholder 1's IRA trustee purchased and held the shares of X directly in the IRA.

X made an election to be an S corporation effective Date 3. However, this S election was invalid because Shareholder 1's IRA was an ineligible shareholder. X represents that since Date 3, Shareholder 1 and Shareholder 2 have filed and paid taxes as if X was an S corporation. X further represents that X reported taxable income on its filed federal income tax returns since Date 3 with the exception of the tax year ended Date 4. X represents that Shareholder 1's IRA distributed the shares of X to Shareholder 1 on Date 5.

X finally represents that X's election was inadvertently invalid on Date 3 and the invalid election was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule of § 1362(f).

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 such year.

Section 1361(b)(1)(B) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

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 1362(f) provides 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 the representations made, we conclude that X's S corporation election on Date 3 was invalid, and thus not effective. We also conclude that this invalid election was inadvertent within the meaning of § 1362(f). We hold that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 3 and thereafter, provided X's S corporation election was otherwise valid and provided that the election was not otherwise terminated under § 1361(b). This letter ruling is subject to the following condition: No later than 120 days from the date of this letter, the federal income tax returns filed for X, Shareholder 1 and Shareholder 2 for the tax year ended Date 4 must be amended to report taxable income and pay taxes accordingly. If this condition is not met, then this ruling is null and void. Furthermore, if this condition is not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of any transaction described above under any other provisions of the Code.

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

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.

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

Sincerely,

Joy Spies

Joy Spies

Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of Letter
Copy for 6110 purposes

cc: