

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202124001**
Release Date: 6/18/2021
Index Number: 1362.04-00

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:PSI:B01
PLR-113147-20
Date:
December 03, 2020

LEGEND:

X =

LLC =

State =

Date 1 =

Date 2 =

Date 3 =

A =

B =

Dear _____ :

This letter responds to a letter dated June 1, 2020, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was formed under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2. On Date 2, LLC, a partnership for federal tax purposes, held shares of X stock. LLC, as a partnership, is an

ineligible shareholder of an S corporation. Therefore, X's S corporation election was ineffective.

X represents that upon discovery of its error, it promptly took remedial action. Effective Date 3, LLC transferred all of its shares of X stock to A and B, individual partners of LLC. X represents that both A and B are eligible S corporation shareholders.

X represents that the circumstances surrounding X's ineffective S corporation election were inadvertent and unintended. X further represents that for each taxable year since Date 2, X and its shareholders have filed consistently with X being an S corporation. In addition, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code 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) 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 § 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) is 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(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the tax 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 paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required 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 such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the facts submitted and representations made, we conclude that X's S corporation election intended to be effective on Date 2 was ineffective because LLC was an ineligible S corporation shareholder under § 1361(b)(1)(B). We further conclude that such ineffectiveness was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on and after Date 2, provided that X's S corporation election was otherwise valid and has not terminated under § 1362(d). Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately stated items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except for the specific ruling above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X was otherwise eligible to be treated as 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.

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 a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

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

cc: