

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
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Date:
August 17, 2021

Legend

X =

LLC =

Y =

Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

A =

B =

C =

D =

E =

F =

Dear :

This letter responds to a letter dated February 22, 2021, submitted on behalf of X by its authorized representatives, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted discloses that X was formed on Date 1 as a limited liability company under the laws of State and elected to be an S corporation effective Date 1.

On Date 2, A sold Y% of the membership interest in X to B, an individual and Z% of the membership interest in X to LLC, a partnership for federal tax purposes. LLC, as a partnership, was an ineligible shareholder of an S corporation. On or about Date 3, X learned that the sale of X interest to LLC terminated X's S corporation election. On Date 4, X and its shareholders took remedial action by having LLC distribute all of its interests in X to A, C, D, E, and F, individual members. X represents that A, B, C, D, E, and F, are eligible S corporation shareholders.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X and its members have agreed to make any adjustments the Commissioner may require, consistent with the treatment of X as an 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 § 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 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 taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C); (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 circumstances resulting in such ineffectiveness or termination, steps were taken (A) so

that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be during the period specified by the Secretary.

Conclusion

Based solely on the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2 when an interest in X was sold to LLC. We further conclude that the termination 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 valid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is a subchapter S corporation for federal purposes.

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

Sincerely,

Laura Fields

Laura Fields

Chief, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosure

Copy for 6110 purposes

cc: