

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-118222-21

Date:

March 11, 2022

Legend

X =

Y =

State =

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This responds to a letter dated August 20, 2021, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted and representations within, X was formed as a limited liability company on Date 1, under the laws of State. Effective Date 2, X elected to be taxed as an S corporation. However, X did not obtain all of the shareholder consents required by § 1.1362-6, resulting in an ineffective election.

Furthermore, on Date 3, shareholder A transferred A's interest in X to Y, and on Date 4, shareholder B transferred a portion of B's interest in X to Y. Y is a limited liability company treated as a partnership for federal tax purposes. Y is therefore an ineligible shareholder, and as a result of the Date 3 and Date 4 transfers, X's status as an S corporation would have terminated had it not already been ineffective. Upon discovering that Y was an ineligible shareholder, Y distributed its interest in X to B, C, and D.

X represents that it intended to make a valid S corporation election effective Date 2 and that the ineffectiveness of the election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that neither X nor its shareholders intended to terminate X's Subchapter S election on Date 3 or Date 4, and that X and its shareholders have filed consistently with being an S corporation. In addition, X represents that, other than the termination due to an ineligible shareholder and the lack of consent of required shareholders on the original Form 2553, X has qualified as a small business corporation at all times since its election effective Date 2. Lastly, 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) as may be required by the Secretary.

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(a)(2) provides that an election to be treated as an S corporation shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

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(d)(2)(B) further provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year made (determined without regard to § 1362(b)(2)) by reason of failure to obtain shareholder consents, or 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 the discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken so that the corporation for which the election was made or termination occurred is a small business corporation, 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 of inadvertent ineffectiveness or 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 ineffectiveness or termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Conclusion

Based on the facts submitted and the representations made, we first conclude that X's S corporation election was ineffective because the required shareholder consents to the election were not obtained. However, we also conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). We further conclude that, if X's election had not been ineffective, it would have terminated on Date 3 because of the ownership of shares by an ineligible shareholder, and that the termination would have been inadvertent within the meaning of § 1362(f). We further conclude that, if X's election had not terminated on Date 3, it would have terminated on Date 4 because of the ownership of shares by an ineligible shareholder, and that the termination would have been inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election was otherwise valid and is not otherwise terminated under § 1362(d).

As a condition of this ruling, any current or former shareholder of X required by § 1.1362-6 to sign X's Form 2553 that has not done so must sign a written statement as described in § 1.1362-6(b)(1) consenting to X's S election effective Date 2. The written statement(s) must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement(s) are to be associated with X's originally filed Form 2553.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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

The rulings contained in this letter are based upon information and representations submitted by X 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 request for rulings, 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,

/s/

Joy C. Spies
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosure (1)
Copy of this letter for §6110 purposes

cc: