

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202310001**
Release Date: 3/10/2023

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1361.00-00, 1361.01-00,
1361.01-04, 1362.00-00,
1362.02-00, 1362.04-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-109737-22

Date:
November 10, 2022

LEGEND:

X =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Agreement =

Amendment =

Dear :

This letter responds to a letter dated May 5, 2022, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Facts

The information submitted states that X is a limited liability company organized under the laws of State on Date 1. On Date 1, and until Date 3, only one individual held an interest in X. On Date 3, two additional individuals acquired interests in X. X made a timely election to be an S corporation effective Date 2.

On Date 3, the members of X entered into Agreement. Agreement provided that different types of profits and losses would be allocated in differing percentages, other than proportionately, including allocations based on any outstanding negative capital account balances. Agreement also provided that, with respect to certain types of transactions, distributions would be paid to members in accordance with their respective positive capital account balances, as adjusted pursuant to section 704 of the Code, and then would be paid pursuant to differing percentages. Thus, shares of stock of the corporation could confer non-identical rights to distribution and liquidation proceeds.

Amendment was executed, effective Date 4, to modify the allocation and distribution language, and to provide for allocations and distributions on a pro rata basis in accordance with membership ownership percentages.

X represents that the termination of X's S corporation election was inadvertent and not motivated by tax avoidance. X further represents that since Date 2, X and its members have filed all returns consistent with X's status as an S corporation. X also represents that since Date 2, all distributions were made to the members based on their pro rata shares of ownership of X. X and its members have agreed to make such adjustments consistent with the treatment of X as an S corporation 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 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(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 for which the election was made or the termination occurred is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation for which the election was made or the termination occurred, 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.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that a corporation generally is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the governing provisions).

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 3 due to certain provisions in Agreement. However, we conclude that such termination was inadvertent within the meaning of § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective Date 3, and thereafter, provided that X is otherwise eligible to be an S corporation and provided that the election was not otherwise terminated.

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. In particular, no opinion is expressed or implied concerning whether X otherwise qualifies as an S corporation.

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 the 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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/

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

Enclosure (1)

cc: