

Internal Revenue Service

Number: **202442001**

Release Date: 10/18/2024

Index Number: 1361.05-00, 1362.01-02

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:03
PLR-101417-24

Date:
July 22, 2024

LEGEND

X =

Sub =

ESOP =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear _____ :

This letter responds to a letter dated December 18, 2023, and subsequent correspondence submitted on behalf of X by its authorized representatives, requesting a ruling under §§ 1362(g) and 1361(b)(3)(D) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated under the laws of State on Date 5. X holds all the shares of stock in Sub, which was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2.

Sub's S corporation election terminated on Date 3 when it was treated as a qualified subchapter S subsidiary (QSub). Sub's QSub election terminated on Date 4. X represents that it is a successor corporation of Sub within the meaning of § 1.1362-5(b) of the Income Tax Regulations.

On Date 6, X's shareholders sold all their shares of stock in X to ESOP, X's employee stock ownership plan. X represents that the shareholders did not make an election under § 1042 on the sale to ESOP. As a result of the sale, ESOP became the sole shareholder of X.

X is requesting permission to elect to be an S corporation effective Date 7, prior to the termination of the five-year waiting period imposed by § 1362(g). Further, X is requesting permission to elect to treat Sub as a QSub effective Date 7, prior to the termination of the five-year waiting period imposed by § 1361(b)(3)(D).

LAW & ANALYSIS

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) is not eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

Section 1.1362-5(b) provides that a corporation is a successor corporation to a corporation whose election under § 1362 has been terminated if (1) 50 percent or more of the stock of the corporation (the new corporation) is owned, directly or indirectly, by the same persons who, on the date of the termination, owned 50 percent or more of the stock of the corporation whose election terminated (the old corporation); and (2) either the new corporation acquires a substantial portion of the assets of the old corporation, or a substantial portion of the assets of the new corporation were assets of the old corporation.

Section 1361(b)(3)(D) provides that if a corporation's status as a QSub terminates, the corporation (and any successor corporation) is not eligible to make (1) an election to be treated as a QSub, or (2) an election under section § 1362(a) to be treated as an S corporation, before its 5th taxable year which begins after the 1st taxable year for which the termination was effective, unless the Secretary consents to the election.

CONCLUSION

Based solely on the information submitted and the representations made, X is granted permission to elect to be an S corporation and to elect to treat Sub as a QSub effective Date 7. This ruling is conditioned on the shareholders of X not making an election under § 1042 concerning the sale of their stock to ESOP.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of any facts discussed or referenced in this letter. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or Sub's eligibility to be a QSub.

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 requested ruling, 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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Robert D. Alinsky
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for § 6110(k)(3) purposes

cc: