

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201536014**
Release Date: 9/4/2015
Index Number: 1362.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-144812-14
Date:
June 02, 2015

Legend

X =
State =
D1 =
D2 =
D3 =
D4 =
A =

Dear :

This letter responds to a letter dated October 31, 2014, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was organized under the laws of State on D1 and elected to be an S corporation effective D2.

X's S corporation election terminated on D3 when one of X's shareholders transferred shares of X to A, an ineligible shareholder. On D4, shortly after X learned of the termination of X's S corporation election due to the transfer of stock to an ineligible shareholder, X redeemed A's shares.

X represents that, as of D3, the shareholders of X were not aware that A was prohibited from owning shares of X, and that such a transaction would terminate X's S corporation election. X also represents that the shareholders of X did not intend to terminate X's S corporation election. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

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) provides that the term "small business corporation" means 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) will be 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, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken (A) so that the corporation is a small business corporation, 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 the termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3 when shares of X were transferred to an ineligible shareholder. We also conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as an S corporation from D3 and thereafter, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

This ruling is conditioned on the shareholders of X from D3 to D4, other than A, being treated as the owners of X stock that was held by A in proportion to their ownership interests in X. X and its shareholders must amend any prior federal tax returns that are inconsistent with this treatment before the earlier of the expiration of the statute of limitations of any tax year affected by the granting of the requested relief or 120 days of the date of this letter.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer that requested 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 X's authorized representative.

Sincerely,

Holly Porter
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: