

This letter responds to a letter dated August 8, 2014, and subsequent correspondence, submitted on behalf of Y, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was incorporated in State 1 on Date 1 and elected to be treated as an S corporation effective Date 1. A, B and C, the three original shareholders, signed the Form 2553, Election by a Small Business Corporation. Although all of the original shareholders were subject to the community property laws of State 2, their spouses did not sign the Form 2553 as required by § 1.1362-6(b)(2)(i) of the Income Tax Regulations. As a result, X's S corporation election was ineffective.

Y represents that it is the successor to X's S corporation election following a tax-free reorganization under § 368(a)(1)(F) on Date 3. Y was incorporated in State 3 on Date 2.

As X's successor, Y represents that the spouses' failure to consent to the S corporation election and the resulting ineffective S corporation election was inadvertent and not motivated by tax avoidance or retroactive tax planning. The shareholders believed all required consents necessary to make X's S corporation election effective had been obtained. Y also represents that, since its formation, X consistently reported its federal taxable income on Form 1120S, U.S. Income Tax Return for an S Corporation, issued Schedule K-1s annually to its shareholders and, to the best of its knowledge, the shareholders of X reported the income set forth on their annual Schedule K-1s consistent with X being an S corporation. Y and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

LAW

Section 1362(a)(2) provides that an S corporation election 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 1.1362-6(a)(2)(i) provides that an S election is not valid unless all shareholders of the corporation at the time of the election consent to the election in the manner provided in 1.1362-6(b).

Section 1.1362-6(b)(2)(i) provides that when the stock of a corporation is owned by husband and wife as community property (or the income from the stock is community property), each person having a community interest in the stock or income therefrom

must consent to the election.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation 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, (2) the Secretary determines that the circumstances resulting in the ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, 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 ineffectiveness, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was ineffective because it was not signed by the spouses of shareholders subject to community property laws. We also conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as having been an S corporation from Date 1, provided that X's S corporation election was not otherwise invalid and not otherwise terminated under § 1362(d).

This ruling is contingent on filing copies of the consents to the S corporation election that were submitted with this ruling request with the appropriate service center, indicating that these consents are to be associated with the originally filed Form 2553, within 120 days of this letter. A copy of this letter should be attached to the filing.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X or Y was or is, respectively, otherwise eligible to be treated 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 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.

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 your authorized representative.

Sincerely,

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

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes