

elected to be treated as S corporations effective D3. X currently has close to 100 shareholders.

The shareholders of X plan to restructure its business by undertaking several steps, the result of which is that X will become a general partnership under State law, and Y and Z together will own all of the interests in X (the "Restructuring"). The shareholders of X will become shareholders in either Y or Z, and Y and Z will be governed by identical boards of directors pursuant to a voting agreement entered into by their shareholders. Following the Restructuring, the parties anticipate that both Y and Z will issue additional shares to new shareholders over time, so that the total number of shareholders in Y and Z together may exceed 100. However, neither Y nor Z will separately have more than 100 shareholders.

Law and Analysis

Section 1361(b)(1)(A) provides that a "small business corporation" is a domestic corporation that, among other requirements, does not have more than 100 shareholders.

Section 1362(a)(1) provides that a small business corporation may elect to be an S corporation.

Rev. Rul. 94-43, 1994-2 CB 199, states that three separate S corporations, each having the maximum number of shareholders permitted under Subchapter S, may conduct business through a partnership and continue to be treated as separate S corporations.

Conclusion

Based on the facts submitted and representations made, we conclude that Y and Z will continue to meet the requirements of § 1361(b)(1)(A) subsequent to the Restructuring so long as neither Y nor Z exceeds 100 shareholders each.

Except as expressly provided herein, 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 concerning the federal tax consequences of the various steps of the Restructuring, nor whether Y or Z are otherwise eligible S corporations for federal tax purposes.

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

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.

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

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

\cc: