

Internal Revenue Service

Department of the Treasury
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LEGEND

X =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Agreements 1 =

Year 1 =

Dear :

This responds to a letter dated November 16, 2015, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

X was organized on Date 1 as a corporation under the laws of State. Effective Date 2, X elected to be treated as an S corporation.

Between Date 3 and Date 4, X entered into Agreements 1 with its shareholders outlining the distributions that each shareholder would receive from X. Agreements 1 utilized two separate distribution clauses that provided for differences as to the amount of distributions X's shareholders would be entitled to receive.

During the period of time Agreements 1 were in effect, however, no disproportionate distributions were made. Instead, X made distributions on a pro-rata basis according to each shareholder's ownership of X.

In Year 1, X amended Agreements 1 to remove any distribution differences and to provide that all distributions are to be made on the basis of the number of shares of X owned by each shareholder.

X represents that X and its shareholders intended for X to be an S corporation effective Date 2 and that X has filed all returns consistent with X's status as an S corporation since Date 2. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided in § 1362(f) of the Code.

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 the year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, and 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) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) further provides that the termination shall be 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 (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 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 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, in part, that a corporation is generally 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, governing provisions).

CONCLUSION

Based on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 3 because X had more than one class of stock. However, we conclude that such termination was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S corporation election was otherwise valid and, apart from the inadvertent termination ruling described above, has not otherwise terminated under § 1362(d).

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

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and is 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 this 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 this ruling may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending copies of this letter to your authorized representative.

Sincerely,

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

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