

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
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PLR-121845-16
Date:
December 15, 2016

LEGEND

X =

State =

Date 1 =

Date 2 =

Date 3 =

Y =

Trust =

Partnership =

m =

n =

PLR-121845-16

Dear _____ :

This responds to a letter dated June 7, 2016, and subsequent correspondence, 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 1, X elected to be treated as an S corporation. Originally, Y owned all of the shares of X.

Partnership was also formed on Date 1. At that time, Y and/or Trust (a grantor trust wholly owned by Y) owned m% of Partnership's interests. Two individuals owned the other n% of Partnership's interests.

On Date 2, Y transferred her shares of X to Partnership and subsequently made gifts of Partnership interests to others.

In or around Date 3, X learned that the transfer of its shares to Partnership terminated its S corporation status. In response, Partnership immediately divested all shares of X, distributing those shares outright to the partners in accordance to their respective interests in Partnership, so that all of the owners of X are now permitted shareholders.

X represents that X and its shareholders intended for X to be an S corporation effective Date 1 and that X has filed all returns consistent with X's status as an S corporation since Date 1. X further represents that during the years at issue all income of Partnership attributable to X was allocated to the individual partners as though the individual partners owned the X stock directly. 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 1361(c)(2)(A)(i) provides in relevant part that a trust all of which is treated (under subpart E of part I of subchapter J of Chapter 1 of the Code) as owned by an individual who is a citizen or resident of the United States qualifies as a shareholder pursuant to § 1361(b)(1)(B).

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.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 2 when Y transferred shares of X stock to Partnership. 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 2 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
Chief, Branch 3
Associate Chief Counsel
(Passthroughs and Special Industries)

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