

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-121375-16
Date: January 3, 2017

LEGEND

X =

State =

Y =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This letter responds to a letter dated June 27, 2016, and subsequent correspondence submitted on behalf of X requesting rulings under §§ 1362(b)(5) and 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X was formed on D1 under the laws of State. X's initial shareholders are trusts that X represents are eligible S corporation shareholders. X represents that it filed Form 2553, Election by a Small Business Corporation, to be treated as an S corporation effective D2. However, X received no acceptance notice from the service center and does not know whether the service center received the election.

On D3, an unrelated S corporation, Y, acquired shares of stock in X. Because Y is an ineligible S corporation shareholder, X's S corporation election, had it been effective, would have terminated on D3. In D4, X learned that Y is an ineligible S corporation shareholder and that as of D3 it no longer qualified as an S corporation. On D5, the trusts transferred their X stock to Y in exchange for Y stock. Y plans to elect under § 1361(b)(3) to treat wholly owned X as a qualified subchapter S subsidiary (QSub) effective D5.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make adjustments, consistent with the treatment of X as an S corporation, as may be required by the Commissioner.

LAW AND ANALYSIS

Section 1362(a)(1) 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 1362(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the third month of the taxable year and on or before the 15th day of the third

month of the following taxable year, then such election shall be treated as made for the following taxable year.

Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)), after the date prescribed by § 1362(b) for making such election for such taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat such an election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

Section 1362(f) provides, in 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 solely on the facts submitted and representations made, we conclude that X has established reasonable cause for failing to make a timely election to be an S corporation effective D2. Thus, we conclude that X is eligible for relief under § 1362(b)(5). Accordingly, if X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective D2, within 120 days from the date of this letter, then such election will be treated as timely made. A copy of this letter should be attached to the Form 2553.

X failed to timely file an election to be treated as an S corporation effective D2. Had X timely filed the election, it would have terminated on D3 when shares of X stock were transferred to Y, an ineligible S corporation shareholder. Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on D3 when shares of X stock were transferred to Y. However, we conclude that the circumstances surrounding the termination were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to

be an S corporation from D3 to D5, provided that X's S corporation election is otherwise valid and was not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation.

The rulings are directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that the rulings may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

The rulings contained in this letter are 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 requests, it is subject to verification on examination.

Sincerely,

/s/

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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