

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201949003**
Release Date: 12/6/2019

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1361.01-04, 1362.02-02,
1362.04-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01

PLR-103613-19
Date:
August 14, 2019

LEGEND

X =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year =

State =

Dear :

This responds to a letter dated December 31, 2018, and subsequent correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations made within, X was formed on Date 1 and made a timely S corporation election effective Date 2, under the laws of State.

On Date 3, X amended its Articles of Incorporation and authorized and issued shares of preferred stock to Trust, an eligible shareholder. The preferred stock provided for different rights with regard to dividends and liquidation preferences. On Date 4, X again authorized and issued additional shares of preferred stock to Trust.

The issuance of the preferred stock on Date 3 created a second class of stock within the meaning of § 1361(b)(1)(D), causing X's S election to terminate effective Date 3. X's S election would have also terminated on Date 4 had it not already terminated on Date 3.

X represents that on or about Date 5 it became aware that the issuance of the preferred stock may have inadvertently terminated its S corporation election. X represents that on Date 6 it took corrective action and (1) converted the preferred stock to common stock, (2) voted to cancel and retire all preferred stock, and (3) amended and restated its Articles of Incorporation to authorize only a single class of stock. X represents that as of Date 6 all issued and outstanding shares of preferred stock have been cancelled and retired. X also represents that its shareholders have taken into account their pro rate shares of X's separately and non-separately computed items pursuant to § 1366 and have made any adjustments to stock basis as required under § 1367. Furthermore, X represents that its shareholders have accounted for any distributions made under § 1368.

X represents that the termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that X and its shareholders filed returns consistent with X's status as an S corporation. Further, X represents that X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

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 and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, 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 1 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 taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, 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 termination, the corporation is treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the circumstances represented by the taxpayer have caused an inadvertent termination of X's S corporation election within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election is 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 of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

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 the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer, Branch 1

Office of the Associate Chief Counsel

(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: