

**Internal Revenue Service**

Number: **202229031**

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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-123698-21

Date:

April 26, 2022

**LEGEND**

Company =

State =

A =

B =

C =

D =

X =

Y =

Z =

Agreement =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated November 1, 2021, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code (Code).

### **FACTS**

Company, a State corporation, elected to be an S corporation effective Date 1. Prior to Agreement, individuals, A, B, and C owned all of the shares of Company stock. Pursuant to Agreement, B and C transferred their shares of Company stock to A who then on Date 2 transferred all of the shares of Company stock to X, an ineligible S corporation shareholder, terminating Company's S corporation election under § 1362(d). Subsequently, pursuant to Agreement, Y, indirectly owned in part by D, an individual, through Z, a partnership, purchased all of the shares of Company stock on Date 3 from X.

Prior to Date 4, through a series of steps, D, through two wholly-owned entities treated as disregarded entities for federal tax purposes under § 301.7701-3 of the Procedure and Administration Regulations, became the sole shareholder of Company. Company is requesting permission to reelect to be an S corporation effective Date 5, prior to the to the five-year waiting period imposed by § 1362(g).

### **LAW**

Section 1362(a) provides that except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) is terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Section 1362(g) provides that if a small business corporation has made an election under § 1362(a) and if such election has been terminated under § 1362(d), the corporation (and any successor corporation) is not eligible to make an election under § 1362(a) for any taxable year before its fifth taxable year which begins after its first taxable year for which the termination is effective, unless the Secretary consents to the election.

Section 1.1362-5(a) of the Income Tax Regulations provides that the corporation has the burden of establishing that under the relevant facts and circumstances, the Commissioner should consent to a new election. The fact that more than 50 percent of the stock in the corporation is owned by persons who did not own any stock in the corporation on the date of the termination tends to establish that consent should be granted. In the absence of this fact, consent ordinarily is denied unless the corporation shows that the event causing termination was not reasonably within the control of the corporation or shareholders having a substantial interest in the corporation and was not part of a plan on the part of the corporation or of such shareholders to terminate the election.

### **CONCLUSIONS**

Based on the information submitted and the representations made, we conclude that Company has met its burden under § 1.1362-5(a) and we grant permission for Company to reelect to be an S corporation effective Date 5. Accordingly, provided that Company makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation, with the appropriate service center effective Date 5, within 120 days from the date of this letter, then such election will be treated as timely made for Company's taxable year beginning Date 5. A copy of this letter should be attached to the Form 2553.

Except for the specific ruling 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 including whether Company was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code 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, we are sending a copy of this letter ruling to your authorized representative.

Sincerely,

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

Enclosure:

Copy of letter for § 6110 purposes

cc: