

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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PLR-103426-22

Date:
August 10, 2022

LEGEND

X =

LLC =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

o =

Dear :

This letter responds to a letter dated February 8, 2022, and supplemental information submitted on behalf of X by its authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X is a corporation organized under the laws of State on Date 1. X filed an election to be treated as an S corporation pursuant to IRC Section 1362(a), to be effective Date 2.

On Date 3, X issued shares of X to LLC, a custodian for A's individual retirement account (IRA). Because A's IRA is an ineligible shareholder under § 1361(b)(1), X's S corporation election terminated on Date 3. On Date 4, upon learning of the termination of its S corporation status, X redeemed all of the X stock owned by A's IRA.

X represents that it has filed tax returns consistent with being an S corporation since Date 2. X further represents that the circumstances resulting in the termination of its S corporation election were inadvertent and were not motivated by tax avoidance or 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 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 such year. Section 1361(b)(1) provides that the term "small business corporation" means 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 one class of stock.

Section 1.1361-1(e)(1) provides that the person for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent is considered to be the shareholder of the corporation. For example, a partnership may be a nominee of S corporation stock for a person who qualifies as a shareholder of an S corporation. However, if the partnership is the beneficial owner of the stock, then the partnership is the shareholder, and the corporation does not qualify as a small business corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be 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.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1361(b)(3)(B)(ii) by any corporation 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 was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or to acquire the required shareholder consents, and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall 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's S election terminated on Date 3, when A's IRA became a shareholder of X. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from Date 3, and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

As a condition to the relief provided herein, A must file within 120 days of this letter any necessary original and amended tax returns for all open years, taking into account A's share of the separately stated and nonseparately stated items of income, loss, deduction, or credit as provided in § 1366 and consistent with the relief granted in the letter. Furthermore, as an adjustment under § 1362(f)(4), a payment of \$0 and a copy of this letter must be sent to the following address within 45 days from the date of this letter: Internal Revenue Service, Kansas City Service Center, 333 W. Pershing Road, Kansas City, MO 64108, Stop 7777, Attn: Manual Deposit.

If the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must notify the service center with which it filed its S corporation election that its election terminated on Date 3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the eligibility of X to be an S corporation.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling 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.

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

Sincerely,

/s/

Laura C. Fields
Chief, Branch 1
(Passthroughs & Special Industries)

Enclosure
Copy for § 6110 purposes