

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-104931-22  
Date:  
August 30, 2022

LEGEND

X =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Dear \_\_\_\_\_ :

This responds to a letter dated March 11, 2022, 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

The information submitted states that X was formed on Date 1 under the laws of State and elected to be treated as an S corporation effective Date 2. A and B were the sole shareholders of X as of Date 3. On Date 3, A and B entered into an Amended and Restated Operating Agreement that included provisions regarding partnerships. Section 5.1 of this agreement provides, in part, that X would maintain capital accounts for each member. Section 10.4 of this agreement provides, in part, that upon liquidation of X, members would distributions to the extent of their capital account balances followed by their interests in X.

On Date 4, A and B entered into a Second Amended and Restated Operating Agreement that continued to include the same provisions regarding partnerships as the first Amended and Restated Operating Agreement. Upon discover of the effect of the partnership provisions, A and B entered into a Third Amended and Restated Operating Agreement on Date 5 to remove the requirement for the members to maintain capital accounts and to provide identical distribution and liquidation rights to the members.

X represents that the termination of X's S corporation election was inadvertent and not motivated by tax avoidance. X further represents that since Date 3, X and its members have filed all returns consistent with X's status as an S corporation. X also represents that since Date 3, all distributions were made to the members based on their pro rata shares of ownership of X. X and its members have agreed to make such 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) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not have (A) 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(f) provides 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 for which the election was made or the termination occurred is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation for which the election was made or the termination occurred, 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.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that a corporation generally is treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the governing provisions).

### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 3 due to the provisions in the Amended and Restated Operating Agreement. We further conclude this termination was inadvertent under the provisions of § 1362(f). We also conclude that if X's status had not terminated on Date 3 it would have terminated on Date 4 due to the provisions in the Second Amended and Restated Operating Agreement. We conclude that X's termination on Date 4 would also have been inadvertent under the provisions of § 1362(f). Therefore, pursuant to § 1362(f), X will be treated as an S corporation effective Date 3, and thereafter, provided that X is otherwise eligible to be an S corporation and provided that the election was not otherwise terminated.

Except as specifically ruled above, we express or imply no opinion under any other provisions of the Code. Specifically, we express or imply no opinion as to whether X otherwise qualifies as an S corporation.

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 the 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.

This ruling is directed to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives

Sincerely,

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Laura C. Fields  
Branch Chief, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:  
Copy for § 6110 purposes

cc: