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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-117294-22

Date:
March 9, 2023

LEGEND

X =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear _____ :

This responds to a letter dated September 7, 2022, submitted on behalf of X by its authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations within, X was formed under the laws of State on Date 1 as a corporation. X elected to be treated as an S corporation effective Date 1. On Date 2, X converted from a State corporation to a State limited partnership, and filed a Form 8832, Entity Classification Election, to be classified as an association taxable as a corporation effective Date 2. X represents that the conversion qualified as a reorganization under § 368(a)(1)(F) and X therefore continued as an S corporation. On Date 2, shares in X were transferred to A, a partnership.

A, as a partnership, was an ineligible shareholder of an S corporation. Additionally, the conversion on Date 2 to a State limited partnership may have created a second class of stock in violation of the one class of stock requirement under § 1361(b)(1)(D), thereby possibly causing X's S corporation election to terminate. On Date 3, the shareholders of X took remedial action by having A convert to an entity disregarded as separate from its owner. Additionally, X has converted to a limited liability company effective Date 4.

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

LAW AND ANALYSIS

Section 1361(a)(1) of the Code 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 (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 the corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) 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 was terminated under § 1362(d)(2) or (3); (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 termination occurred is a small business corporation; and (4) the corporation for which the election was made or 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 the representations made, we conclude that if X's conversion from a State corporation to a State limited partnership on Date 2 did create a second class of stock, the consequent termination of X's S corporation election was inadvertent within the meaning of 1362(f). We further conclude X's S corporation status terminated within the meaning of § 1362(f) on Date 2 because A was an ineligible shareholder. Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 2 and thereafter, provided X's S corporation election is otherwise effective and not terminated under § 1362(d).

This letter ruling is contingent upon X and its shareholders filing any original and amended returns for all open taxable years consistent with the relief granted in this letter. If this condition is not met, then this ruling is null and void.

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 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 your authorized representatives.

Sincerely,

/s/

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: