

Internal Revenue Service

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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:3

PLR-102507-23

Date:

August 01, 2023

Legend:

X =

Y =

ESOP =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated January 20, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(g) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1. On Date 2, unitholders of Y, a State limited liability company that had elected to be an S corporation effective Date 3, exchanged their units in Y for shares of stock in X. In addition, Y elected to be disregarded as an entity separate from its owner, X, for federal tax purposes effective Date 2. As a result of the exchange, Y's unitholders became shareholders of X, Y became a wholly owned subsidiary of X, and Y's S corporation election terminated. X represents that it is a successor corporation of Y within the meaning of § 1.1362-5(b) of the Income Tax Regulations.

On Date 4, X's shareholders sold their shares of stock in X to ESOP, X's employee stock ownership plan. As a result of the sale, ESOP became the sole shareholder of X. X represents that it will not consent to the application of §§ 4978 and 4979A and, accordingly, that none of X's shareholders will be able to make an election under § 1042 concerning the sale of their X stock to ESOP. X is requesting permission to elect to be an S corporation effective Date 5, prior to the termination of the five-year waiting period imposed by § 1362(g).

LAW AND ANALYSIS

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) 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.

Section 1.1362-5(b) provides that a corporation is a successor corporation to a corporation whose election under § 1362 has been terminated if (1) 50 percent or more of the stock of the corporation (the new corporation) is owned, directly or indirectly, by the same persons who, on the date of the termination, owned 50 percent or more of the stock of the corporation whose election terminated (the old corporation); and (2) either the new corporation acquires a substantial portion of the assets of the old corporation,

or a substantial portion of the assets of the new corporation were assets of the old corporation.

CONCLUSION

Based solely on the facts submitted and the representations made, X is granted permission to elect to be an S corporation effective Date 5.

Except as expressly provided herein, 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.

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.

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

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

Enclosure:

Copy of letter for § 6110 purposes

cc: