

**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:B03

PLR-105323-23

Date:

September 6, 2023

LEGEND

X =

Y =

A =

B =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trust 1 =

Trust 2 =

Dear

This letter responds to a letter dated September 30, 2022, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

#### FACTS

The information submitted states that X, a State 1 corporation, elected to be an S corporation effective Date 1. On Date 2, Y, a State 2 limited liability company classified as a partnership for federal tax purposes, acquired all of X's shares of stock. Trust 1, a grantor trust of A, and Trust 2, a grantor trust of B, owned all of the membership interests in Y. Because Y was an ineligible shareholder under § 1361(b)(1)(B), X's S corporation election terminated on Date 2.

On Date 3, X learned that its S corporation election terminated on Date 2. After learning that its S corporation election was terminated, X took corrective steps so that by Date 4, all of X's shareholders, Trust 1 and Trust 2, were eligible S corporation shareholders under § 1361(b)(1)(B).

X represents that the termination of its S corporation election was not motivated by tax avoidance or retroactive tax planning. Further, X represents that it continued to file its income tax returns consistent with being an S corporation after its S corporation election terminated. Finally, X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner with respect to the period specified by § 1362(f).

#### LAW

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, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S 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(d)(2)(B) provides that any termination under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides, in part, 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 required 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.

#### CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 2 when Y, an ineligible S corporation shareholder, acquired shares of X stock. However, we conclude that the circumstances resulting in the termination of X's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will continue to be treated as an S corporation from Date 2 and thereafter provided that X's S corporation election was valid and has not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provisions of the Code. Specifically, we express or imply no opinion as to whether X is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3) of the Code, 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.

Under 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 the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc: