

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
February 15, 2024

LEGEND

X =

Y =

A =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This letter responds to a letter dated July 27, 2023, and subsequent correspondence, submitted on behalf of Y by its authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X elected to be treated as an S corporation effective Date 1. However, X was not incorporated under the laws of State until Date 3. Additionally, A, X's sole original shareholder, signed the Form 2553, Election by a Small

Business Corporation, on Date 2, a date preceding X's incorporation. As a result, X's S corporation election was ineffective.

On Date 4, as part of what Y represents was a reorganization under § 368(a)(1)(F), X's shareholders contributed all their stock in X to Y, thereby causing X to become a wholly owned subsidiary of Y. Consistent with Rev. Rul. 2008-18, 2008-1 C.B. 674, Y was treated as the successor S corporation to X for federal income tax purposes and therefore did not make a new S corporation election.

Y, as X's successor, represents that the circumstances surrounding X's ineffective S corporation election were inadvertent and unintended. Y further represents that since Date 3, X has filed all returns consistent with X's status as an S corporation and its shareholders have filed consistent with X's status as an S corporation. Additionally, Y and its shareholders have agreed to make any adjustments required as a condition of obtaining relief under § 1362(f) that the Commissioner may require, consistent with the treatment of X and its successor Y as an S corporation.

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 the 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(a)(1) 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(b)(1) provides that an election under § 1362(a) may be made by a small business corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the third month of the taxable year.

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 paragraph (2) or (3) of § 1362(d); (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 (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, 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 such ineffectiveness or termination, the 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 X's S corporation election was ineffective on Date 1 because X was not a small business corporation until Date 3. We further conclude that the ineffectiveness of X's S corporation election constituted an inadvertent invalid election within the meaning of § 1362(f). Consequently, under § 1362(f), we rule that X, and Y as X's successor, will be treated as an S corporation from Date 3 and thereafter, provided, that the S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the Code. Specifically, we express or imply no opinion as to whether X or Y was or is, respectively, otherwise eligible to be treated as an S corporation. Further, we express or imply no opinion on the validity of the reorganization under § 368(a)(1)(F) and its tax consequences.

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

The ruling contained in this letter is based on 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 Y's authorized representatives.

Sincerely,

Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy of letter for § 6110 purposes

cc: