

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-121543-23

Date:
April 23, 2024

LEGEND

X =

Date1 =

Date2 =

Date3 =

A =

B =

State =

Dear _____ :

This letter responds to a letter dated October 12, 2023, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, X, a State corporation, elected to be an S corporation effective Date 1. As of Date 1, X had two shareholders, A, a U.S. citizen, and B, a nonresident alien. In Date 2, X learned that its S corporation election was ineffective because B was an ineligible S corporation shareholder. Subsequently, X and its shareholders took remedial steps so that as of Date 3, only A held shares of X stock.

X represents that the circumstances resulting in its ineffective S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that it has filed its federal tax returns consistent with being an S corporation effective Date 1. Finally, X and its shareholders agree to make any 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 (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 one class of stock.

Section 1.1361-1(g)(1)(i) provides, in part, that a corporation having a shareholder who is a nonresident alien as defined in § 7701(b)(1)(B) does not qualify as a small business corporation.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) is terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) the 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 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); (2) the Secretary determines that the circumstances resulting in the

ineffectiveness were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation; and (4) the corporation for which the election was made, and each person who was a shareholder of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such ineffectiveness, 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 was ineffective on Date 1 because, on Date 1, X had an ineligible shareholder under § 1361(b)(1)(C). We conclude, however, that the circumstances resulting in the ineffectiveness were inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), X will be treated as an S corporation from Date 1 and thereafter, provided that X's S corporation election was valid and has not otherwise terminated under § 1362(d).

This ruling is contingent on X treating A as owning the shares of X stock previously held by B from Date 1 and thereafter, and X and A filing within 120 days from the date of this letter all required returns (including amended returns) for all open years consistent with A owning all the shares of X stock since Date 1.

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 and the regulations thereunder. Specifically, we express or imply no opinion regarding whether X is otherwise eligible 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 requested ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested 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 your authorized representative.

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: