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:B01
PLR-146193-08
Date: March 5, 2009

Legend:

X =

State =

A =

B =

Date =

Year =

Dear :

This letter responds to a letter dated October 24, 2008, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1361(b)(1)(D) of the Internal Revenue Code.

FACTS

The information submitted states that X is a corporation incorporated in State. X made a valid S corporation election, effective Date, its date of incorporation.

In Year, X entered into an informal unwritten employment agreement with A and B as officers and employees of X.

X represents that all of its outstanding shares confer identical rights to distribution and liquidation proceeds and that it has made distributions to its shareholders only in proportion to the shareholder's stock ownership. X further represents that the circumvention of the one class of stock requirement was not a principal purpose of the employment agreement. Finally, X represents that it and each of its shareholders have filed all returns consistent with X's S election remaining in effect since Date.

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) provides that, for purposes of subchapter S, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not, among other things, have more than one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides that a corporation is generally treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state law, and binding agreements relating to distribution and liquidation proceeds (collectively, the "governing provisions"). A commercial contractual agreement, such as a lease, employment agreement, or loan agreement, is not a binding agreement relating to distribution and liquidation proceeds and thus is not a governing provision unless a principal purpose of the agreement is to circumvent the one class of stock requirement.

CONCLUSION

Based on the information submitted and representations made by X, we conclude that the employment agreement was not a governing provision within the definition contained in § 1.1361-1(l)(2)(i) and therefore did not cause X to have more than one class of stock for purposes of § 1361(b)(1)(D).

Except as specifically ruled upon above, no opinion is expressed as to the federal income tax consequences of the facts described above under any other provision of the Code. In particular no opinion is expressed or implied as to whether X otherwise qualifies as a subchapter S corporation under § 1361.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter ruling will be sent to X's authorized representatives.

Sincerely,

David R. Haglund

David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

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