

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-103874-15

Date:

July 14, 2015

LEGEND

X =

Y =

Z =

A =

B =

C =

D =

E =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

Date7 =

Date8 =

N1 =

N2 =

N3 =

N4 =

Dear _____ :

This letter responds to a letter dated January 6, 2015, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

The information submitted states that X was formed under the laws of State on Date1 and elected to be treated as an S corporation effective Date2. A and B formed Y, a State limited liability company, on Date3, and Z, a State limited partnership, on Date4. At the time of Z's formation, Y owned an N1% general partnership interest in Z, and A and B each owned an N2% limited partnership interest in Z. In addition, A and B each own an N3% interest in Y. On Date5, A and B each transferred their respective shares of X stock to Z. On Date6, A and B each transferred by gift an N4% limited partnership interest in Z to each of C, D and E (the children of A and B).

In Date7, X learned that Z was an ineligible shareholder and that X's S corporation election had terminated effective Date5. Shortly thereafter, on Date8, Z distributed all of the stock of X to its individual owners, on a pro rata basis. To avoid multiple transfers, any stock distributable to Y was instead distributed directly to A and B, as the members of Y. X's tax return for such tax year was prepared consistent with this treatment.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date2. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and persons who were or are shareholders of X at any time since Date5 agree to make any adjustments (consistent

with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

Section 1361(a) 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) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and that meets the requirements specified in § 1361(b)(1)(A) through (D).

Section 1361(b)(1)(B) provides that S corporations may 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 1.1361-1(f) of the Income Tax Regulations provides that, except as otherwise provided in § 1.1361-1(e)(1) (relating to nominees), § 1.1361-1(h) (relating to certain trusts), and, for taxable years beginning after December 31, 1997, § 1361(c)(6) (relating to certain exempt organizations), a corporation in which any shareholder is a corporation, partnership, or trust does not qualify as a small business 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 shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by a 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 is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date5 due to the transfer of X stock to Z,

an ineligible shareholder. We further conclude that this termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date5, and thereafter, provided that X's S corporation election was valid and the election was not otherwise terminated under § 1362(d).

Except as specifically set forth above, we express or imply no opinion concerning the federal income tax consequences of the facts described above under any other provision of the Code and the regulations thereunder. Specifically, we express or imply no opinion regarding whether X otherwise qualifies as a small business corporation under § 1361.

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.

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.

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

Sincerely,

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

Enclosures (2):
Copy of this letter
Copy for § 6110 purposes

cc: