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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:
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PLR-113990-15

Date:
October 16, 2015

X =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Agreement 1 =

Agreement 2 =

M =

N =

Dear :

This responds to a letter dated April 16, 2015 and subsequent correspondence submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

X was organized on Date 1 as a corporation under the laws of State.

On Date 2, X amended its articles of incorporation to provide that X could issue M shares of stock in each of M classes. In general, there were no preferences, distinctions, or special rights with respect to any one class of stock, except that the articles provided that X and its shareholders could, by written agreement, specify the manner in which the assets of X would be distributed in the event of a liquidation, dissolution, or winding up of X. In conjunction with these amended articles of incorporation and on the same date, X and its shareholders entered into binding Agreement 1.

Agreement 1 permitted potentially different rights of the shareholders to liquidation proceeds. It provided that the net proceeds on liquidation would be distributed in accordance with a plan of distribution approved by N% of the shareholders or, if no plan was approved, the proceeds would be distributed in a way that could vary by class and by the length of a shareholder's employment with X.

Effective Date 3, X elected to be treated as an S corporation. The articles of incorporation and the provisions of Agreement 1 thus applied during the time X intended to be an S corporation.

On Date 4, X amended its articles of incorporation to provide for only one class of common stock of X. On Date 5, X and its shareholders amended Agreement 1 by entering into binding Agreement 2. Agreement 2 does not provide for any differing rights among the shareholders to proceeds from any liquidation of X.

To date, there has not been any distribution in liquidation proceeds to the shareholders of X, and therefore, there have not been any different liquidating distributions among the shareholders.

X represents that X and its shareholder intended for X to be an S corporation effective Date 3 and X has filed all returns consistent with X's status as an S corporation since Date 3. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided in § 1362(f) of the Code.

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 which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, and 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 1362(d)(2)(A) provides than an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) further provides that the termination shall be 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 (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.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides, in part, 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 laws, and binding agreements relating to distribution and liquidation proceeds (collectively, governing provisions).

CONCLUSION

Based on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective because X had more than one class of stock. However, we conclude that such ineffectiveness was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

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. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and are accompanied by a perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of this request, it is subject to verification on examination.

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

Pursuant to a power of attorney on file with this office, we are sending copies of this letter to your authorized representative.

Sincerely,

Holly Porter
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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