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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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Date:
December 16, 2015

LEGEND

X = EIN:

Y =

Z =

EIN:

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State 1 =

State 2 =

Dear :

This responds to a letter signed October 30, 2015, submitted on behalf of Z (successor to X and Y) by Z's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted and representations made within, X was incorporated on Date 1 under the laws of State 1. On Date 2, X made an election to be treated as an S corporation. On Date 3, X converted to Y, a limited partnership, under the laws of State 2, and made an election to be treated as an association taxable as a corporation for U.S. federal income tax purposes. On Date 4, Y converted to Z, a corporation, under the laws of State 2. On Date 5, all of the shares of Z were sold to an unrelated third party purchaser, an ineligible S corporation shareholder. X, Y, and Z are hereinafter collectively referred to as the taxpayer.

The conversion on Date 3 may have created a second class of stock in violation of the one class of stock requirement under § 1361(b)(1)(D), thereby possibly causing X's S corporation election to terminate. Other than this potential termination of the S corporation election, Z has qualified as an S corporation. The taxpayer represents that the conversions on Date 3 and Date 4 qualified as F reorganizations within the meaning of § 368(a)(1)(F). The taxpayer represents that it believed that the S corporation election succeeded to Y and Z because the conversions were F reorganizations.

The taxpayer represents that the possible termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. The taxpayer represents that neither it nor any of its shareholders intended to terminate the taxpayer's Subchapter S election. In addition, the taxpayer represents that other than the possible inadvertent termination, the taxpayer has qualified as a small business corporation at all times since Date 2. Further, the taxpayer represents that the taxpayer and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary. The taxpayer and its shareholders represent that they have filed all returns consistent with the taxpayer being 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 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 subsection (c)(2), or an organization described in subsection (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(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides in part that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period of inadvertent termination of the S election, agrees to makes 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 termination, the corporation is 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 the conversion on Date 3 may have caused the taxpayer to have more than one class of stock. We conclude, however, that if the taxpayer's S election was terminated, such termination was inadvertent within the meaning the meaning of § 1362(f). Therefore, the taxpayer will be treated as an S corporation effective Date 2 through Date 5, when Z was sold, provided the taxpayer'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 the taxpayer's eligibility to be an S corporation. In addition, we express or imply no opinion on conversions on Date 2 and Date 3 qualified as F reorganizations within the meaning of § 368(a)(1)(F).

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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representative.

Sincerely,

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

Enclosures (2)
Copy of this letter
Copy of this letter for section 6110 purposes

cc: