Internal Revenue Service

Number: **201710021**
Release Date: 3/10/2017

Index Number: 1362.00-00, 1362.01-00, 1362.02-00, 1362.02-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:PSI:B01
PLR-134185-16

Date:
December 05, 2016

LEGEND

X =

State =
Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

LLC1 =

LLC2 =

E =

F =

G =

H =

a =

b =

c =

Dear :

This responds to the letter dated October 20, 2016, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted, X was incorporated under the laws of State on Date 1 and elected to be an S corporation for federal tax purposes effective Date 2. On Date 3, a shares of stock in X were transferred to each LLC1 and LLC2, partnerships for federal tax purposes. The partners of LLC1 were E, F and G, all individuals who are eligible S corporation shareholders. The partners of LLC2 were E, F, and H, all individuals who are eligible S corporation shareholders. LLC1 and LLC2, as partnerships, were ineligible shareholders of an S corporation. On Date 4, X's attorneys learned that the transfer of stock to LLC1 and LLC2 terminated X's S election. On Date 5, LLC1 distributed all of its a shares of X stock to E, F, and G in accordance with their relative interests in LLC1, b shares to each E and F, and c shares to G. Also on Date 5, LLC2 distributed all of its a shares of X stock to E, F, and H in accordance with their relative interests in LLC2, b shares to each E and F, and c shares to H.

X represents that, from Date 3 onward, it filed its tax returns as if it were an S corporation. X represents that the amount of tax paid during this period was the same as if E directly held the b shares held by each LLC1 and LLC2, F directly held the b shares held by each LLC1 and LLC2, G directly held the c shares held by LLC1, and H directly held the c shares held by LLC2.

X represents that its eligible shareholders have filed all federal income tax returns consistent with X's S corporation election. Moreover, X represents that the circumstances resulting in the possible termination of X's S corporation election were inadvertent and were not motivated by tax avoidance. X and its shareholders have agreed to make such adjustments, consistent with the treatment of X as an S corporation, as may be required by the IRS.

Law

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect.

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, 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 information submitted and the representations made, we conclude that X's S election terminated on Date 3 when the X stock was transferred to LLC1 and LLC2. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be

an S corporation on and after Date 3, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d).

Except for the specific ruling 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, no opinion is expressed concerning whether X was otherwise eligible to be an S corporation.

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, we are sending a copy of this letter to X's authorized representative.

Sincerely,

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

Enclosures (2):

Copy of this letter,
Copy for § 6110 purposes