

Internal Revenue Service

Number: **201748004**
Release Date: 12/1/2017
Index Number: 1362.04-00

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-113759-17
Date:
August 31, 2017

LEGEND

- X =

- A =

- Date 1 =

- Date 2 =

- Date 3 =

- Date 4 =

- State =

Dear :

This letter responds to a letter dated April 14, 2017, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 1.

On Date 2, X stock was issued to A pursuant to a stock option agreement. A, a nonresident alien, was an ineligible shareholder. Only subsequently in Date 3 did X become aware of A's ineligibility. Soon thereafter, on Date 4, X repurchased the X stock issued to A.

X represents the following: (1) the issuance of X stock involved no tax avoidance or retroactive tax planning; (2) the issuance was not part of a plan to terminate X's S corporation status; and (3) X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

LAW

Under § 1361(a)(1), an S corporation is a small business corporation for which an election under § 1362(a) is in effect. Section 1361(b)(1) defines "small business corporation," in part, as a corporation that has no nonresident aliens as shareholders.

Section 1362(d)(2) terminates a corporation's S corporation status when the corporation ceases to be a small business corporation. The termination is effective on and after that date.

Under § 1362(f), a corporation that has lost its S corporation status under § 1362(d)(2) will be treated as continuing to be an S corporation during the period specified by the Secretary if: the Secretary determines that the termination was inadvertent; the corporation took steps to return to its status as a small business corporation within a reasonable time after the discovery of the termination; and the corporation and all persons who were shareholders during the specified period agree to make adjustments required by the Secretary consistent with the treatment of the corporation as an S corporation.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated under § 1362(d)(2) on Date 2 when X stock was issued to A who was an ineligible S Corporation stockholder due to the fact that A was a nonresident alien. We further conclude that the termination was "inadvertent" within the meaning of § 1362(f). Therefore, under § 1362(f) X will be treated as continuing to be an S corporation on and after Date 2, provided X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d)(2).

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 whether X is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling 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.

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

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes