Internal Revenue Service

Number: **201815004**
Release Date: 4/13/2018

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

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:B01
PLR-122000-17

Date:
December 20, 2017

LEGEND

X =

Partnership =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Dear :

This responds to a letter dated July 14, 2017, and supplemental correspondence, submitted on behalf of X, by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

Facts

According to the information submitted and representations made within, X was formed under the laws of State and made an S election effective Date 1. On Date 2, all of the shares in X were transferred to Partnership, a partnership for federal tax purposes. Partnership, as a partnership, was an ineligible shareholder of an S corporation. On Date 3, X learned that the transfer of stock to Partnership terminated X's S election. On Date 4, X and its shareholders took remedial action by having Partnership transfer all of its shares in X to A and B, both eligible S corporation shareholders. After Date 4, all income and other items from the X shares were allocated to A and B.

Additionally, X elected to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 as qualified subchapter S subsidiaries (QSubs) effective Date 1. Because X's S corporation election terminated on Date 2, X's elections to treat Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 as QSubs also terminated on Date 2.

X represents that the circumstances resulting in the termination of X's S corporation election and QSub elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that it has filed returns consistent with its status as an S corporation and Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 as QSubs. X and its shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of X as an S corporation and Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 as QSubs.

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 and which does not (A) have more than 100 shareholders, (B) 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, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(b)(3)(B) defines a QSub as any domestic corporation which is not an ineligible corporation if 100 percent of the stock of the corporation is held by the S corporation, and the S corporation elects to treat the corporation as a QSub.

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 that if (1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be 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 2 when the X stock was transferred to

Partnership. 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 2, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d). Furthermore, Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 will be treated as continuing to be QSubs of X on and after Date 2, provided that the elections were otherwise valid and not otherwise terminated under § 1361(b)(3)(C).

Partnership will be treated as the shareholder of X from Date 2 until Date 4, at which point A and B will be treated as the shareholders. Accordingly, the shareholders of X must include in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts described above under any other provision of the code, including whether X was otherwise a valid S corporation and whether Sub 1, Sub 2, Sub 3, Sub 4, Sub 5, Sub 6, Sub 7, and Sub 8 were otherwise valid QSubs.

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.

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

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: