Internal Revenue Service

Number: **201923005**
Release Date: 6/7/2019

Index Number: 7518.00-00

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:03
PLR-120540-18

Date:
December 14, 2018

Legend

Taxpayer =

Sub 1 =

Sub 1A =

Sub 1B =

Sub 2 =

Sub 2A =

Sub 2B =

Administrator =

Agency =

State 1 =

State 2 =

State 3 =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated June 27, 2018, and subsequent correspondence, submitted on behalf of Taxpayer by its authorized representative requesting a ruling under section 7518 of the Internal Revenue Code (Code).

Facts

Taxpayer was organized as an S corporation that owns 100 percent of Sub 1 and Sub 2, each organized under the laws of State 1. Sub 1 owns 100 percent of Sub 1A, organized under the laws of State 2, and Sub 1B, organized under the laws of State 3. Sub 2 owns 100 percent of Sub 2A, organized under the laws of State 3, and Sub 2B, organized under the laws of State 1. Sub 1, Sub 1A, Sub 1B, Sub 2, Sub 2A, and Sub 2B (Taxpayer's Subsidiaries) are qualified subchapter S subsidiaries (QSubs).

Taxpayer maintains a capital construction fund (CCF) pursuant to a capital construction fund agreement (CCF Agreement) entered into with Administrator.

Taxpayer plans to execute the following:

1. Prior to Date 1, convert under state law Taxpayer's Subsidiaries into limited liability companies (LLCs) that will be disregarded entities for federal income tax purposes (the Conversion); and

2. Effective Date 1 revoke its S election pursuant to section 1362(d)(1) and section 1.1362-2(a) of the Income Tax Regulations (the Revocation).

A letter from Agency dated Date 2 states that for purposes of 46 USC Chapter 535 and the regulations promulgated under 46 CFR Part 390, and based on Taxpayer's representations that (i) for applicable state law purposes, each of the converted entities are deemed to be the same entity that existed prior to the conversion and (ii) title to all of the assets, including the vessels, will remain vested in the Taxpayer's Subsidiaries that currently own them, neither the Conversion nor the Revocation will be deemed to constitute a withdrawal from the CCF or a disposition of any of the vessels.

Taxpayer represents the following:

1. Each of Taxpayer's Subsidiaries will have a valid QSub election in place at the time of the Conversion.

2. Taxpayer has no plan or intention to file a Check-the-Box Election to treat Taxpayer's Subsidiaries as associations for federal income tax purposes.

3. Following the Conversion, Taxpayer, Sub 1, and Sub 2 will each: (i) possess the same powers, (ii) hold the same rights; (iii) be subject to the same duties and responsibilities with respect to each of Taxpayer's Subsidiaries, as they did prior to the Conversion.

4. Following the Conversion, each of Taxpayer's Subsidiaries will remain organized in the same state.

5. All assets and liabilities of each of Taxpayer's Subsidiaries before the Conversion will remain the assets and liabilities of each of Taxpayer's Subsidiaries respectively following the Conversion.

6. None of the assets owned by Taxpayer's Subsidiaries will require transfer of legal title as a result of the Conversion.

7. The state conversion statutes provide that, for state law purposes, Taxpayer's Subsidiary that exists after the Conversion is deemed to be the same Taxpayer's Subsidiary that existed before the Conversion, and that the assets and liabilities owned by Taxpayer's Subsidiaries (as QSubs) before the Conversion are considered to be automatically owned by Taxpayer's Subsidiaries respectively (as LLCs) after the Conversion.

8. Before, during, and after the Revocation, the CCF and its funds remain with Taxpayer.

9. There is no plan or intention to change the ownership of any of Taxpayer's Subsidiaries after the Conversion.

Law and Analysis

Section 607(a) of the Merchant Marine Act (the MMA) provides that any citizen of the United States owning or leasing one or more eligible vessels may enter into an agreement (CCF Agreement) with the Secretary of Commerce to establish a capital construction fund (CCF) with respect to any or all of the vessels. Any CCF Agreement entered into shall be for the purpose of providing replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States for operation in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States and shall provide for the deposit in the CCF of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under section 607(f) of the MMA. The deposits in the CCF, and all withdrawals from the CCF, whether qualified or nonqualified, shall be subject to the conditions and requirements as the Secretary of Commerce may by regulations prescribe or are set forth in the CCF Agreement.

Section 607(f)(1) of the MMA and section 7518(e)(1) of the Code provide that a qualified withdrawal from the CCF is one made in accordance with the terms of the CCF Agreement but only if it is for (A) the acquisition, construction, or reconstruction of a qualified vessel, (B) the acquisition, construction, or reconstruction of barges and containers that are part of the complement of a qualified vessel, or (C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel.

Section 607(h)(1) of the MMA and section 7518(g)(1) of the Code provide that any withdrawal from a CCF that is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

Section 607(f)(2) of the MMA and section 7518(e)(2) provide that if the Secretary of Commerce determines that any substantial obligation under any CCF Agreement is not being fulfilled, the Secretary of Commerce may, after notice and opportunity for hearing to the person maintaining the CCF, treat the entire CCF or any portion thereof as an amount withdrawn from the CCF in a nonqualified withdrawal.

Conclusion

Based on Taxpayer's representations and the letter from Administrator, we conclude that the Revocation and Conversion will not be treated as a withdrawal under section 7518 of the Code.

Except as specifically ruled upon above, we express or imply no opinion concerning the Federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that 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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

_____

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: