Internal Revenue Service

Number: **201935010**
Release Date: 8/30/2019

Index Number: 1362.00-00, 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-135954-18

Date:
May 23, 2019

LEGEND

X =

A =

B =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

N1 =

N2 =

N3 =

Dear

This responds to a letter dated December 3, 2018, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code ("Code").

FACTS

The information submitted states that X was incorporated under the laws of State on Date1. On Date2, X undertook a recapitalization, and X's Board of Directors amended X's Articles of Incorporation to divide X's common stock into N1 shares of class A stock and N2 shares of class B stock. The class A shares retained voting power and the class B shares held no voting power. The class A and class B shares otherwise conferred identical rights to distribution and liquidation proceeds. On Date3, X's Board of Directors amended X's Articles of Incorporation for a second time to change the liquidation rights of X's stock. After this amendment, the class A and class B shares were entitled to receive equal shares of any assets of X in liquidation until the amount of $N3 had been paid to each share. Upon reaching $N3 in liquidation proceeds per share, the class B shares were entitled to receive the balance of any remaining assets of X.

On Date4, X filed an election to be taxed as an S corporation. X represents that at time this election was filed, X's Board of Directors were either unaware or had forgotten that the distribution and liquidation rights had been changed and differed for class A and class B shares as a result of the Date3 amendment to X's Articles of Incorporation. In addition, X represents that X's tax advisors were unaware of this amendment. On Date4, X had two shareholders, A and B. A and B remained the only shareholders of X from Date4 through Date6.

X represents that X's legal counsel discovered the Date3 amendments to X's Articles of Incorporation that created two classes of stock, in connection with due diligence performed prior to the sale of X stock by A and B that occurred on Date6. Upon learning about this Date3 amendment, X's Board of Directors amended X's Articles of Incorporation on Date5 to reconstitute the class A and class B shares into a single class of stock with identical rights to distribution and liquidation proceeds, in order to rectify the ineffectiveness of X's S corporation election.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date4. The facts indicate that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date4 agree to make any adjustments

(consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

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 such 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 one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations provides, in part, that a corporation is generally treated as having only one class of stock if all outstanding shares of stock of the corporation confer identical rights to distribution and liquidation proceeds.

Section 1.1361-1(l)(2)(i) provides that the determination of whether all outstanding shares of stock confer identical rights to distribution and liquidation proceeds is made based on the corporate charter, articles of incorporation, bylaws, applicable state laws, and binding agreements relating to distribution and liquidation proceeds (collectively, the governing provisions).

Section 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3) or § 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

the 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 § 1362(f), 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 facts submitted and the representations made, we conclude that X's S corporation election was ineffective on Date4 as a result of the second class of stock created by the Date3 amendment to X's Articles of Incorporation. We conclude that this ineffectiveness was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as an S corporation beginning on Date4 and continuing thereafter, unless X's S corporation election otherwise terminated under §1362(d) for other reasons.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation.

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 request for a ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Adrienne M. Mikolashek
Branch Chief, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: