

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-102041-19

Date:
August 09, 2019

Legend:

X =

State =

A =

B =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter signed December 20, 2018, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations within, X was formed on Date 1, under the laws of State. Effective Date 2, X elected to be taxed as an S

corporation. However, the required consent to X's S corporation election on Form 2553 was not obtained from A, who had community property shares in X by virtue of being the spouse of B, an X shareholder, resulting in an inadvertent invalid election.

Furthermore, it was discovered that on Date 3, X's stock ledger indicates a change in B's stock ownership in X. The ledger was changed from direct individual ownership by B to reflect ownership by a corporation, an ineligible shareholder.

X represents that it intended to make a valid S corporation election effective Date 2 and that the ineffectiveness of the election was inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that neither X nor its shareholders intended to terminate X's Subchapter S election on Date 3, and that X and its shareholders have filed consistently with being an S corporation. In addition, X represents that, other than the termination due to an ineligible shareholder listed on the company stock ledger and the lack of consent of a required shareholder on the original Form 2553, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) as may be required by the Secretary.

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 which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, and 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(d)(2)(B) further provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year made (determined without regard to § 1362(b)(2)) by reason of failure to obtain shareholder consents, or was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken so that the corporation for which the election was made or

termination occurred is a small business corporation, 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 of inadvertent ineffectiveness or termination of the S election, agrees to make 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 ineffectiveness or termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Section 6.11 of Revenue Procedure 2019-1, I.R.B. 2019-1, 22, provides that, with an exception not relevant here, a letter ruling will not be issued with respect to an issue that is clearly and adequately addressed by statute, regulations, decision of a court, revenue rulings, revenue procedures, notices, or other authority published in the Internal Revenue Bulletin (Comfort Ruling). However, with certain exceptions not relevant here, the Associate office may, in its discretion, decide to issue a Comfort Ruling if the Associate office is otherwise issuing a letter ruling to the taxpayer on another issue arising in the same transaction.

CONCLUSION

Based on the facts submitted and the representations made, we first conclude that X's S corporation election was invalid because A did not consent to the election. However, we also conclude that the invalidity of X's S corporation election was inadvertent within the meaning of § 1362(f). We further conclude that, if X's election had not been ineffective, it would have terminated on Date 3 because of the ownership of shares by an ineligible shareholder, and that the termination would have been inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election was otherwise valid and is not otherwise terminated under § 1362(d).

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 X's eligibility 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,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
IRS Office of Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

cc: