Internal Revenue Service

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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-118266-22

Date:
December 13, 2022

RE:

Legend

X =

Y =

D1 =
D2 =
D3 =
a =
b =
State =

Dear :

This responds to your letter, dated September 12, 2022, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was formed as a limited liability company in State and made an election to be treated as an S corporation effective D1. On D2, X transferred a shares to an individual retirement account (IRA) created for the benefit of Y in exchange for b. An IRA is not an eligible shareholder of an S corporation under § 1361(b)(1)(B). Neither X nor X's shareholders were aware that the transfer of stock to Y's IRA would cause X's S corporation election to terminate.

Once X learned of the termination of X's S corporation election due to the transfer of stock to an ineligible shareholder, X redeemed the shares issued to Y's IRA for cash on D3.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that it filed consistent with treatment of X as an S corporation from D2 to D3. X and its shareholders have agreed to make such adjustments (consistent with such treatment as an S corporation) as may be required by the Secretary.

LAW

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

Section 1362(d)(2)(A) provides that in general, 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. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is effective on and after the date of cessation.

Rev. Rul. 92-73, 1992-2 C.B. 224, provides that a trust that qualifies as an IRA under § 408(a) is not a permitted shareholder of an S corporation under § 1361. In addition, Rev. Rul. 92-73 notes that, when an S corporation inadvertently terminates due to the transfer of S corporation stock to an IRA, relief may be requested pursuant to § 1362(f).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation 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 was terminated under § 1362(d)(2), (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 so that the corporation for which the election was made or the termination occurred is a small business corporation or 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 the adjustments (consistent with the treatment of such corporation as an S corporation) 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 during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on D2 when shares of X's stock were transferred to Y's IRA, an ineligible S corporation shareholder. We conclude, however, that the termination described in this paragraph was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective D2 and thereafter, provided that its S corporation election was otherwise valid and has not terminated under § 1362(d) other than as discussed in this letter.

Except for the specific ruling 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. In particular, we express or imply no opinion regarding X's eligibility to be an S corporation.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by the 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.

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 a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

_____

Laura Fields, Chief
Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Encl:
Copy for § 6110 purposes

cc: