Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-109674-24
Date:
November 19, 2024

LEGEND

X =

Partnership =

S Corporation #1 =

S Corporation #2 =

A =

B =

C =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

n =

Dear :

This letter responds to a letter dated May 10, 2024, and subsequent correspondence, 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 Date 1 and elected to be an S corporation effective Date 1. On Date 2, X issued shares of its stock to Partnership, a limited liability company formed under the laws of State and classified as a partnership for federal tax purposes. Partnership was owned by individuals, A and B. Also on Date 2, X issued shares of its stock to S Corporation #1, an S corporation wholly owned by an individual, C. Because Partnership and S Corporation #1 were ineligible S corporation shareholders under § 1361(b)(1)(B), X's S corporation election terminated on Date 2.

On Date 3, Partnership transferred its shares of X stock to S Corporation #2, an S corporation wholly owned by A. Had X's S corporation election not already terminated on Date 2, it would have terminated on Date 3, when shares of its stock were transferred to an ineligible S corporation shareholder under § 1361(b)(1)(B).

In Date 4, X learned that its S corporation election terminated on Date 2. Subsequently, on Date 5, S Corporation #1 transferred its shares of X stock to C and S Corporation #2 transferred its shares of X stock to A. X represents that A, B, and C were, at all times, eligible S corporation shareholders under § 1361(b)(1)(B).

X represents that the circumstances resulting in the termination of its S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Further, X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as an S corporation.

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not, among other requirements, 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(a) 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)(A) 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. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) is 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 terminated under § 1362(d)(2), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which 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) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 2, when X issued shares of its stock to Partnership and S Corporation #1, ineligible S corporation shareholders. We also conclude that had X's S corporation election not terminated on Date 2, its S corporation election would have terminated on Date 3 when shares of X stock were transferred to S Corporation #2. We further conclude that the circumstances resulting in termination of X's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), (1) X will continue to be treated as an S corporation from Date 2 and thereafter, provided that X's S corporation election was valid and has not otherwise terminated under § 1362(d) for reasons not addressed in this letter; (2) A and B will be treated as owning the shares of X stock that Partnership #1 owned from Date 2 to Date 6 in proportion to their ownership interests in Partnership; (3) C will be treated as owning the shares of X stock that S Corporation #1 owned from Date 2 to Date 7; and (4) A will be treated as owning the shares of X stock that S Corporation #2 owned from Date 3 to Date 7.

This ruling is contingent on X and its shareholders filing, within 120 days from the date of this letter, all required federal income tax returns (including amended returns) for all open years consistent with A, B, and C owning the shares of X stock, as described above.

Furthermore, as an adjustment under § 1362(f)(4), a payment of $n and a copy of this letter ruling must be sent no later than Date 8 to the following address:

Internal Revenue Service
Kansas City Submission Processing Campus
333 W. Pershing Road
Kansas City, MO 64108
Stop 7777
Attn.: Manual Deposit

If the above conditions are not met, this ruling is null and void. In addition, if these conditions are not met, X must notify the service center with which it filed its S corporation election that its S corporation election terminated on Date 2.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible 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 requested 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 a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy of this letter for § 6110 purposes

cc: