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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:01

PLR-102593-25

Date:

April 08, 2025

LEGEND

X =

Y =

State 1 =

State 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to a letter dated January 29, 2025, and subsequent correspondence, submitted on behalf of X and Y by its authorized representative,

requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X is a limited liability company formed under the laws of State 1 on Date 1. Effective Date 2, X filed Form 2553, *Election by a Small Business Corporation*, for X to be treated as an S corporation. However, X represents that it did not obtain all of the shareholder consents required by § 1.1362-6 of the Income Tax Regulations, resulting in an ineffective election. Specifically, some spouses of X's shareholders located in community property states at the time of the election failed to properly consent to X's S corporation election. In addition, X's operating agreement, effective Date 1, which continued in effect through Date 2, included provisions relevant to treating X as a partnership for federal income tax purposes. X represents that certain provisions of its operating agreement inadvertently created a second class of stock, which is an independent reason that its S election was ineffective.

On Date 3, incident to what was intended to qualify as a reorganization under § 368(a)(1)(F), X's shareholders contributed all of their stock in X to Y, a corporation organized under the laws of State 2. Effectively immediately afterwards, Y made an election to treat X as a qualified subchapter S subsidiary (QSub). Following the reorganization, on Date 4, X made an election under § 301.7701-3(c) to be disregarded as an entity separate from its owner Y. On Date 5, Y sold X to an unrelated party.

X and Y represent that the invalid S election was inadvertent and was not motivated by tax avoidance or retroactive tax planning, and that X and Y and its shareholders consistently treated X and Y as being an S corporation from Date 2 through Date 3. Further, X and Y and its shareholders agree to make any adjustments required as a condition of obtaining relief for the invalidity of X's election as provided under § 1362(f) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1362(a) of the Code 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 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1362(a)(2) provides that an election to be an S corporation shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1.1362-6(a)(2)(i) provides that the election to be an S corporation is not valid unless all shareholders of the corporation at the time of the election consent to the election in the manner provided in § 1.1362-6(b).

Section 1.1362-6(b)(2)(i) provides that when stock of the corporation is owned by spouses as community property (or the income from the stock is community property), each person having a community interest in the stock or income therefrom must consent to the election.

Section 1361(b)(1) provides that a small business corporation means a domestic corporation which is not an ineligible corporation for such year and which does not, among other limitations, have more than one class of stock.

Section 1.1361-1(l)(1) 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(1)(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, governing provisions).

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 a corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in pertinent 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 terminated under § 1362(d)(2) or (3), (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 event 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, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), 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 such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the facts submitted and the representations made, we first conclude that X's S corporation election was ineffective because the required shareholder consents to the election were not obtained, and because of the provisions contained in X's operating agreement. However, we also conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 2 through Date 3, when X became a QSub, provided X's S corporation election was otherwise effective and not terminated under § 1362(d).

As a condition to this ruling, any current or former spouse of a current or former shareholder required by § 1.1362-6 to sign X's Form 2553 that did not do so must sign a written statement as described in § 1.1362-6(b)(1) consenting to X's S corporation election effective Date 2. The written statement(s) must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement(s) are to be associated with X's originally filed Form 2553.

Except as specifically ruled 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 whether X was otherwise eligible to be an S corporation or whether the transactions on Date 3 qualified as an F reorganization within the meaning of § 368(a)(1)(F).

This ruling is directed only to the taxpayer that 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 a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

/S/

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

PLR-102593-25

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Enclosure

Copy for § 6110 purposes

cc: