

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B03

PLR-117520-22

Date:

February 15, 2023

Re:

Legend

X =

A =

B =

C =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated September 9, 2022, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted and representations made, X was formed as a limited liability company under the laws of State on Date 1 and elected to be taxed as an S corporation effective Date 1.

On Date 2, A, B, and C, all limited liability companies, acquired shares in X. A was a partnership for federal tax purposes, and B and C were each wholly owned by a corporation. As such, A, B, and C were ineligible S corporation shareholders. After discovering the termination of X's S corporation election, X and its shareholders took remedial action to ensure X's shares were all owned eligible S corporation shareholders.

X represents that the circumstances resulting in the termination of its S corporation election were not motivated by tax avoidance or retroactive tax planning. X also represents that it and its shareholders intended for X to be an S corporation beginning on Date 1.

X further represents that all of its shareholders filed tax returns consistent with X being an S corporation. X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S corporation) 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) provides that the term "small business corporation" means 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 1 class of stock.

Section 1362(a) provides that a small business corporation may elect 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 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(f) provides, in relevant 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 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 the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in such termination, such 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 A, B, and C became ineligible shareholders. We further conclude that the termination was inadvertent within the meaning of § 1362(f). X will be treated as continuing to be an S corporation from Date 2 and thereafter, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express or imply no opinion as to the federal income tax consequences of the facts of this case under any other provision of the Code and the regulations thereunder. Specifically, we express or imply no opinion 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 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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

/s/ Margaret Burow

By: _____
Margaret Burow
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: