

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:B03

PLR-147165-12

Date:

April 25, 2013

LEGEND

Company =

State =

Court =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

a =

b =

A =

B =

Trust 1 =

Trust 2 =

Dear :

This letter responds to a letter dated October 25, 2012, and subsequent correspondence, submitted on behalf of Company by Company's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

Company was incorporated under the laws of State on Date 1 and elected to be an S corporation effective Date 2. In Date 3, Company's shareholders executed a Shareholders Agreement. Under the agreement, a shareholder is not allowed to transfer shares of Company's stock to any person or entity that is not permitted to be a shareholder of an S corporation. On Date 4, A transferred shares of Company's stock to Trust 1, and B transferred shares of Company's stock to Trust 2. Trust 1 and Trust 2 are not eligible S corporation shareholders.

On Date 5, Court entered an order holding that A's and B's transfers of Company's stock to Trust 1 and Trust 2, respectively, were null and void and that A and B remained the owner of the transferred shares in Company. As a result of the order, A and B have filed or will file amended tax returns for taxable years a and b consistent with the treatment of Company as an S corporation.

Company represents that the circumstances resulting in the possible termination of Company's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Company and its shareholders have agreed to make adjustments, consistent with the treatment of Company as an S corporation, as may be required by the Service.

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) provides, in part, 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 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(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (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 this 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 facts submitted and the representations made, we conclude that if Company's S corporation election terminated on Date 4 due to ineligible shareholders, the termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f) Company will be treated as continuing to be an S corporation from Date 4 and thereafter, provided that Company's S corporation election is not otherwise terminated under § 1362(d). In addition, Company and its shareholders must treat A and B as having been the shareholders of Company shares that A and B attempted to transfer to Trust 1 and Trust 2, respectively, and amend any prior tax returns that are inconsistent with this treatment within 120 days of the date of this ruling.

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 Company is otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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

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.

Sincerely,

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

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: