

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-109388-22

Date:

November 04, 2022

Legend

X =

State =

Agreement 1 =

Agreement 2 =

Agreement 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This responds to a letter dated April 20, 2022, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted and representations within, X was formed as a limited liability company on Date 1 under the laws of State. Effective Date 2, X elected to be taxed as an S corporation.

Effective Date 3, X adopted an operating agreement, Agreement 1, containing terms causing X to have more than one class of stock under § 1361(b)(1)(D). Specifically, section 4.5 of Agreement 1 states that a capital account would be maintained for each member as provided in Treas. Reg. § 1.704-1(b)(2)(iv); section 5.1 of Agreement 1 states that allocations of items of income, gain, loss, deduction and credit would generally be allocated based on percentage interests, but also provided for § 704(c) to be taken into account and for a "qualified income offset"; and section 16.4(d) of Agreement 1 provides for distributions upon liquidation to be made among the members in accordance with their positive capital account balances.

Shortly thereafter, X adopted Agreement 2, which replaced Agreement 1, still containing terms causing X to have more than one class of stock under § 1361(b)(1)(D). Specifically, section 8.4(c) of Agreement 2 states that the assets would be distributed among the members in proportion to their capital accounts.

X represents that Agreement 1 and Agreement 2 created a second class of stock, causing X's S corporation status to terminate. Upon learning that Agreement 1 and then Agreement 2 terminated X's S election, X replaced Agreement 2 with Agreement 3, eliminating any language which would create more than one class of stock, effective Date 4. X represents that the termination of its S election was inadvertent and not motivated by tax avoidance. X and its shareholders have consented to make any adjustments as may be required by the Secretary.

X requests relief pursuant to § 1362(f) due to Agreement 1 and Agreement 2 having governing provisions that created more than one class of stock.

Law and Analysis

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 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 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 one class of stock.

Section 1.1361-1(l)(1) of the Income Tax Regulations 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(l)(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 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) and the regulations thereunder provide relief for an ineffective S corporation election (i.e., treating the ineffective election as effective) or inadvertent termination of an S corporation election provided the following conditions are met: (A) The corporation made an election under § 1362(a) that was ineffective or was terminated; (B) The Service determines that the circumstances resulting in the ineffectiveness or termination were inadvertent; (C) Steps were taken by the corporation to qualify it as a small business corporation within a reasonable period of time after discovery of the ineffectiveness or termination event; and (D) The corporation and all shareholders agree to any adjustments that the Service may require for the period.

Conclusion

Based on the facts submitted and representations made, we conclude that X's S election terminated on Date 3, when X adopted Agreement 1, and would have terminated when X adopted Agreement 2 had it not already terminated on Date 3. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation on

and after Date 3, 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 described above under any other provision of the Code, including X's eligibility to be a valid S corporation.

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

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it 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.

Sincerely,

Jennifer N. Keeney
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure (1)
Copy of this letter for § 6110 purposes

cc: