Internal Revenue Service

Index Number: 1362.02-02

Number: **200008015**
Release Date: 2/25/2000

Department of the Treasury

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1 PLR-111360-99
Date:
November 18, 1999

Legend

X =

A =

B =

State 1 =

State 2 =

D1 =

LLCA =

LPA =

LLCB =

LPB =

n% =

m% =

This responds to the letter dated June 17, 1999, submitted on behalf of X, requesting a ruling that the proposed restructuring described below will not terminate X's subchapter S corporation status under § 1362(d)(2)(A) of the Internal Revenue Code.

FACTS

X was incorporated under State 1 law. Effective D1, X elected to be treated as a subchapter S corporation. A and B are individual shareholders of X.

Pursuant to an overall business plan, A plans to form a single member limited liability company, LLCA, and a limited partnership, LPA, under State 2 law. A plans to exchange n% of A's ownership interest in X for a 100% ownership interest in LLCA. Subsequently, A plans to transfer A's remaining interest in X to LPA at the same time LLCA transfers its entire interest in X to LPA. In exchange, A will receive a m% limited partnership interest in LPA and LLCA will receive a n% general partnership interest in LPA.

Similarly, pursuant to an overall business plan, B plans to form a single member limited liability company, LLCB, and a limited partnership, LPB, under State 2 law. Like A, B will exchange n% of B's ownership interest in X for a 100% ownership interest in LLCB. Subsequently, B will transfer B's remaining interest in X to LPB at the same time LLCB transfers its entire interest in X to LPB. In exchange, B will receive a m% limited partnership interest in LPB and LLCB will receive a n% general partnership interest in LPB.

Neither LLCA, LPA, LLCB, nor LPB will elect to be treated as an association taxable as a corporation for federal income tax purposes. Rather, these entities will exist according to their default classification under § 301.7701-3 of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code defines an S corporation as a small business corporation for which an election under § 1362(a) is in effect. Section 1362(a) provides, in part, that a small business corporation may elect to be an S corporation.

Section 1361(b)(1)(B) provides that to be a small business corporation, a corporation must be a domestic corporation which does not have as a shareholder a person (other than an estate, a trust described in subsection (c), or an organization described in subsection (c)(6)) who is not an individual.

Section 1362(d)(2)(A) provides that an S corporation election 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. Any termination shall be effective on and after the date of cessation. Section 1362(d)(2)(B).

Section 301.7701-3T(a) of the Temporary Regulations provides that a business entity not automatically classified as a corporation can elect its classification for federal tax purposes. An eligible entity with a single owner can elect to be classified as an association taxable as a corporation or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b) of the Procedure and Administration Regulations provides a default classification for an eligible entity that does not make an election. Under § 301.7701-3(b)(1)(ii), a domestic eligible entity with a single owner, unless it elects otherwise, is disregarded as an entity separate from its owner. If the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner. Section 301.7701-2(a).

Here, after completing the proposed reorganization, A will be the sole owner of LPA, owning n% through LLCA, a disregarded entity, and m% directly. Similarly, B will be the sole owner of LPB, owning n% interest through LLCB, a disregarded entity, and m% directly. Because LPA and LPB are each treated as owned by single owners, they will be disregarded for federal tax purposes and A and B each will be treated as directly owning X stock held by LPA and LPB, respectively.

CONCLUSIONS

Based solely on the facts submitted and representations made, and provided that A and B are eligible S corporation shareholders, we conclude that A's and B's ownership of X stock through LLCA, LPA, LLCB, and LPB, as described above, will not terminate X's S corporation election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X otherwise satisfies the S corporation eligibility requirements.

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

Pursuant to the Power of Attorney on file with this office, a copy of this ruling is being sent to X.

Sincerely,

Signed/Daniel J. Coburn
Daniel J. Coburn
Assistant to the Branch Chief, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes