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:01
PLR-126814-17
Date:
February 23, 2018

LEGEND

Company =

State =

Agreement 1 =

Agreement 2 =

Agreement 3 =

Agreement 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to a letter dated August 29, 2017, and subsequent correspondence submitted on behalf of Company requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted, Company was organized as a limited liability company under the laws of State on Date 1. Subsequently, Company made an election to be treated as an S corporation effective Date 2.

Company's single shareholder signed an operating agreement, Agreement 1. Agreement 1 included provisions allocating Company profits, losses, and distributions to Members in proportion to their relative Membership interests.

On Date 3, Agreement 1 was replaced by Agreement 2. Agreement 2 included provisions regarding partnerships, including Section 4.3, which incorporated by reference the qualified income offset, minimum gain chargeback and partner minimum gain chargeback provisions under § 704(b). Section 4.3.2 provided, in part, for special allocations as provided in § 704(c) in the case of property that was contributed to Company in-kind, as well as for "reverse" § 704(c) allocations if the book value of Company assets was adjusted. Section 4.3.3 provided, in part, for special allocation of gain or loss resulting from a § 754 election. Section 4.4 provided, in part, that if Company was liquidated, assets of Company were to be distributed to the Members of Company in accordance with the balances in their respective capital accounts.

On Date 4, a second shareholder acquired interests in Company. On Date 5, Agreement 2 was replaced by Agreement 3. Agreement 3 included language making Company a "benefit corporation" and an update to the schedule of members to reflect the issuance of units to an additional shareholder. Agreement 3 included the same partnership provisions that were in Agreement 2.

When Company's members discovered the effect of the partnership provisions in Agreement 3, they amended the operating agreement into Agreement 4, effective Date 6, to remove the provisions and provide identical distribution and liquidation rights to Company's members.

Company represents that the termination of the S corporation was inadvertent and not the result of tax avoidance or retroactive tax planning. Company further represents that no federal tax return of any person has been filed inconsistent with a valid S corporation election having been made for Company effective Date 2. Company also represents

that all distributions and allocations of income to its shareholders have been made pro rata in accordance with their interests in Company. Company and its shareholders have agreed to make any adjustments required by the Service consistent with the treatment of Company as an S corporation.

LAW AND ANALYSIS

Section 1361(a) 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) defines a "small business corporation" as 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 1362(f) provides that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) 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 to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances 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 or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the shareholder consents, and (4) the corporation for which the election was made or the termination occurred, 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 or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation or a qualified subchapter S subsidiary, as the case may be, during the period specified by the Secretary.

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).

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company's S corporation election terminated on Date 4 for having more than one class of stock due to the partnership provisions in Agreement 2, which were repeated in Agreement 3. We also conclude that the circumstances resulting in the termination of Company's S corporation election were inadvertent within the meaning of § 1362(f). Thus, under the provisions of § 1362(f), Company will be treated as an S corporation effective Date 4, and thereafter, provided that Company's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

Except as expressly provided herein, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provisions of the Code. Specifically, we express or imply no opinion on whether Company was otherwise eligible to be an S corporation.

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

Pursuant to a power of attorney on file, we are sending a copy of this letter to Company's 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,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
(Passthroughs and Special Industries)

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