

Internal Revenue Service

Number: **200508012**

Release Date: 2/25/05

Index Number: 1362.04-00

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-146079-04

Date:

November 10, 2004

Legend

X =

Y =

Z =

Trust =

State =

D1 =

D2 =

D3 =

Dear :

This responds to a letter dated, August 3, 2004, sent by your authorized representative, requesting inadvertent termination relief under §1362(f) of the Internal Revenue Code.

STATEMENT OF FACTS

According to the information submitted and representations therein, X was incorporated on D1 pursuant to the laws of State. X made an election to be treated as an S corporation effective D2.

On D3, Trust purchased shares of X. Y, the sole income beneficiary of Trust, intended to file an election for Trust to be treated as a qualified subchapter S trust ("QSST") under § 1361(d). However, Y did not timely file the appropriate election under § 1361(d)(2).

X and Y mistakenly believed that Trust qualified as a QSST. Within a reasonable time after the discovery of the mistake, X submitted this ruling request seeking relief under § 1362(f).

It is represented that at all relevant times, X and its shareholders treated X as an S corporation and filed their tax returns accordingly. X and all of its shareholders for the relevant period have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary with respect to such period.

LAW AND ANALYSIS

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect. Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in § 1362(c)(2)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), trusts that may be shareholders of an S corporation include a trust all of which is treated as owned by an individual who is a citizen or resident of the United States.

Section 1361(d)(1) provides in part that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under § 1361(d)(2) - such trust shall be treated as a trust described in § 1361(c)(2)(A)(i).

Section 1361(d)(3) provides that the term "qualified subchapter S trust" (QSST) means a trust - (A) the terms of which require that - (i) during the life of current income beneficiary, there shall be only 1 income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever the corporation ceases to be a small business corporation. Section 1362(f) provides that if (1) an election under § 1362(a) 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 consent, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken - (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such 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 X's election to be treated as an S corporation terminated on D3. We also conclude that the termination constituted an "inadvertent termination" within the meaning of § 1362(f).

Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D3, and thereafter, provided that the beneficiary of Trust (Y) files a QSST election for Trust with the appropriate service center, effective D3, within 60 days of the date of this letter and provided that X's S corporation election is not otherwise terminated under § 1362(d). A copy of this letter should be attached to the election.

Except as specifically provide herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax purposes and whether Trust is a QSST under § 1361(d).

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,
/s/ David R. Haglund
David R. Haglund
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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

cc: