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Person To Contact:
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X =

State =

A =

B =

C =

E =

Trust1 =

Trust2 =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

Dear :

This responds to a letter dated August 24, 2007, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. Upon the death on D3 of A, Trust2 became the owner of the X shares. Trust2 was an ineligible S corporation shareholder and X's S corporation election terminated on D3. From D3 to D4, B reported the income of X as if Trust2 were a QSST. From D4 when B died to D5 when X stock was transferred to a limited liability company, C (the child of A and B) reported the income of X as if Trust2 were a QSST. Upon the death on D4 of B, X stock was to be distributed to C under the terms of Trust1. An attorney advised C to place the X shares in a limited liability company. On D5, shares of X were transferred to E, a limited liability company taxed as a partnership. The income from the X stock passed through to E was reported by C and her husband on a joint return. During an audit of X beginning on D6, the auditor noted that the transfer of X stock to E caused the termination of X's S corporation election. To remedy this problem, on D7, E transferred its X stock to C, an eligible S corporation shareholder. Consequently, X's S corporation election would have terminated on D5 due to the transfers of X stock to E, had the election not already terminated on D3.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that from D3, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

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 it was 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), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, 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 § 1362(f), 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 ineffectiveness or termination, the

corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3, under § 1362(d)(2), when Trust2, an ineligible shareholder, acquired X stock. We also conclude that this termination of X's S election on D3 was an inadvertent termination within the meaning of § 1362(f). Moreover, had X's S corporation election been valid, it would have terminated on D5 under § 1362(d)(2), when E, an ineligible shareholder, acquired X stock. Similarly, this termination of X's S election on D5 would have been an inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from D3 and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d). During the period from D3 to D4, B will be treated as the owner of the X stock acquired by Trust2. During the period from D4 to D5, C will be treated as the owner of the X stock acquired by Trust2. During the period from D5 and thereafter, C will be treated as the owner of the X stock acquired by E.

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 regarding X's eligibility to be an S corporation or the validity of its S corporation election.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: