

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-114460-09
Date:
May 15, 2009

Legend

X =

Trust =

State =

D1 =

D2 =

Dear :

This responds to a letter dated March 11, 2009, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State. X represents that it timely filed an S corporation election with an intended effective date of D1.

On D1, Trust's assets included shares of X stock. X represents that Trust was eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) effective D1. However, no election to be to an ESBT was filed on behalf of Trust. Therefore, the Trust was not a permissible shareholder, and X's S corporation election was ineffective on D1.

Trust was amended, pursuant to the laws of State, effective on D2, to provide for the mandatory creation of four Qualified Subchapter S Trusts (QSST) (the "Subtrusts"). However, no elections to be QSSTs were filed on behalf of the Subtrusts. Therefore, the Subtrusts were not permissible shareholders, and X's S corporation election would have terminated on D2, had it not been ineffective.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election and the failure to file QSST elections for the Subtrusts were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X has filed federal income tax returns consistent with having a valid S corporation election in effect for X beginning on D1. 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 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 paragraph (2) or (3) of § 1362(d); (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 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, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that X's S corporation election was inadvertently ineffective on D1 because X had an ineligible shareholder. Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D1 and thereafter. Furthermore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter provided that (i) the Subtrusts file QSST elections effective D2, pursuant to the procedures set forth in § 1.1361-1(j)(6), with the appropriate service center within 60 days of the date of this letter, (ii) Trust and its beneficiaries will file returns for tax years beginning on or after D2 consistent with the treatment of the Subtrusts as QSSTs, including amending returns previously filed for tax years beginning on or after D2, and (iii) provided that X's election to be an S corporation was not otherwise ineffective and was not terminated under § 1362(d). A copy of this letter should be attached to each QSST election.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation, Trust's eligibility to be an ESBT, or the Subtrusts' eligibility to be a QSST.

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 forwarded to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

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