Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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

Refer Reply To:
CC:PSI:B2
PLR-127038-09
Date:
October 22, 2009

X =

State =

A =

Trust1 =

Trust2 =

D1 =

D2 =

D3 =

Dear

This responds to a letter dated May 20, 2009, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent invalid election 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. Trust1 was a shareholder of X on D2, but Trust1 was an invalid S corporation shareholder. Therefore, X's S corporation election on D2 was invalid. X represents that Trust1 qualified to elect to be treated as an electing small business trust (ESBT) under § 1361(e) but an ESBT

election was not made. On D3, Trust1 sold its X shares to Trust2. It is represented that Trust2 is a wholly-owned grantor trust under §§ 671 and 677. A grantor trust is a valid S corporation shareholder under § 1361(c)(2)(A)(i).

X represents that the circumstances resulting in X's invalid S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed 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 or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or 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 § 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 was not effective on D2 because Trust1 was not an eligible shareholder of X. We also conclude that X's ineffective S election on D2 was inadvertent within the meaning of § 1362(f).

Therefore, we conclude that X will be treated as an S corporation for the period from D2 provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

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 whether Trust2 is a trust permitted as a shareholder of an S corporation under 1361(c)(2).

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 representatives.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: