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:B02
PLR-155838-09

Date:
June 25, 2010

X =

D1 =

D2 =

D3 =

D4 =

State =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Dear

This letter responds to a letter dated December 22, 2009, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated in State and elected to be an S corporation effective D1. Beginning on D2, and subsequent dates, shares of X were transferred to Trust 1, Trust 2, and Trust 3. Trust 1, Trust 2 and Trust 3 were each intended to be a qualified subchapter S trust (QSST). However, the income beneficiaries of each trust failed to file a timely QSST election. Furthermore, Trust 1, Trust 2, and Trust 3 could not have made valid QSST elections because their terms failed to require specifically that (1) 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 (2) 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. Consequently, X's S election terminated on D2.

On D3, Trust 1 terminated and the shares of X owned by Trust 1 were allocated equally between Trust 2 and Trust 3. On D4, the trustee of Trust 2 transferred all of the shares of X owned by Trust 2 to Trust 4 and the trustee of Trust 3 transferred all the shares of X owned by Trust 3 to Trust 5. X represents that Trust 4 and Trust 5 meet the requirements to be treated as QSSTs.

X represents that the termination of X's S election was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Further, X and X's shareholders have continually treated X as an S corporation. As such, all items of income, gain, loss, and deduction recognized by X since D3 have been allocated among the shareholders of X, including Trust 1, Trust 2 and Trust 3. In turn, the beneficiaries of each Trust reported, on their income tax returns for all taxable years since D2, their respective share of the income, gain, loss and deductions of X. X and its shareholders have agreed to make such adjustments as the Service may require with respect to all periods since D2.

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not 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.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such 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 solely on the information submitted and the representations made, we conclude that X's S election was terminated on D2, under § 1362(d)(2), because shares of X were transferred to an ineligible shareholder, and that this termination of X's S election was inadvertent within the meaning of § 1362(f). We further conclude that the terms that govern Trust 4 and Trust 5 will meet the definition of a QSST under § 1361(d)(3).

Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D2 and thereafter, provided X's election to be an S corporation was otherwise valid and was not terminated under § 1362(d) for other reasons.

During the termination period, Trust 1 will be treated as a QSST described in § 1361(d)(3) from D2 to D3. Trust 2 and Trust 3 will each be treated as a QSST from D2 to D4. In addition, Trust 4 and Trust 5 will each be treated as a QSST (assuming they otherwise qualify as QSSTs) provided that the respective income beneficiary files a QSST election effective D4 with the appropriate service center within 120 days following the date of this letter. Based on the particular facts of this case, no adjustments are required under § 1362(f)(4).

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 on whether X was or is otherwise eligible to be treated as an S corporation.

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 representatives.

Sincerely,

Bradford R. Poston
Acting Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: