

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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CC:PSI:B01
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Date:
January 08, 2014

Legend

X =

A =

Estate =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Dear :

This letter responds to a letter dated July 8, 2013, submitted on X's behalf by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

Facts

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective on Date 2.

On Date 3, A, a shareholder of X, died and A's shares were transferred to Estate. The shares were subsequently transferred to Trust on Date 4. X represents that Trust was eligible to be an electing small business trust (ESBT) under § 1361(e)(1). However, the trustee did not timely an ESBT election on behalf of Trust. Therefore, X's S corporation election terminated on Date 5.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were 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.

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 subsection (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)(v) provides that, for purposes of § 1361(b)(1)(B), trusts that may be shareholders include an electing small business trust.

Section 1361(e)(1)(A) provides that an "electing small business trust" means any trust if (i) such trust does not have as a beneficiary any person other than an (I) individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of § 170(c) or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary; (ii) no interest in such trust was acquired by purchase, and (iii) an election under this subsection applies to such trust.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations provides in part that the trustee of the trust must make the ESBT election by signing and filing, with the service

center where the S corporation files its income tax return, a statement that meets the requirements of paragraph (m)(2)(ii) of this section.

Under § 1.1361-1(m)(2)(iii), if S corporation stock is transferred to a trust, the ESBT election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

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 consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based on the information submitted and the representations made, we conclude that X's S corporation election inadvertently terminated within the meaning of § 1362(f) on Date 5. Pursuant to the provisions of § 1362(f) and contingent on the filing of the ESBT election for Trust, X will be treated as an S corporation from Date 4 and thereafter, provided X's S corporation was valid and provided that the election was not otherwise terminated under § 1362(d).

Within 120 days from the date of this letter, an election to treat Trust as an ESBT effective Date 4 must be made with the appropriate service center. This ruling is further contingent upon Trust filing original returns within 120 days from the date of this letter. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed on whether X was or is otherwise

eligible to be treated as an S corporation or whether Trust is eligible to be an ESBT.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

David Haglund
David Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: