# Internal Revenue Service

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## Department of the Treasury
Washington, DC 20224

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Person To Contact:
          , ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-142868-13
Date:
April 11, 2014

Legend

X         =

B         =

Trust 1     =

Trust 2     =

Date 1     =

Date 2     =

State      =

Dear         :

      This responds to a letter dated October 16, 2013 and subsequent correspondence, submitted on X's behalf by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2.  B, Trust 1, and Trust 2 were shareholders of X on Date 2.

X represents that Trust 1 and Trust 2 were eligible to be an ESBT within the meaning of § 1361(e).  However, the trustee of Trust 1 and the trustee of Trust 2 did not make an election under § 1361(e)(3) to treat the trust as an ESBT.  Therefore, Trust 1 and Trust 2 were not permissible shareholders and X's S corporation election was invalid.

X represents that the circumstances resulting in a failure to file ESBT elections for Trust 1 and Trust 2 were inadvertent and were not motivated by tax avoidance or retroactive tax planning.  X further represents that since Date 2, X and its shareholders have filed returns consistent with X having a valid S election.  X represents that Trust 1 and Trust 2 have at all times met the requirements of an electing small business trust.  Lastly, 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 Service.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) 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, (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), an electing small business trust (ESBT) may be a shareholder.

Section 1361(e)(1)(A) provides that an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than an (I) individual, (II) an estate, (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 1361(e)(1)(B) provides that an ESBT shall not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax

under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) provides 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 § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation 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); (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 circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation; and (4) the corporation for which the election was made, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such 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, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was ineffective on Date 2 because the trustee of Trust 1 and the trustee of Trust 2 failed to make a timely ESBT election. We further conclude that the ineffectiveness of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

This ruling is contingent on the trustee of Trust 1 and the trustee of Trust 2 filing an effective ESBT election effective Date 2, pursuant to the procedures set forth in §

1.1361-1(m)(2), with the appropriate service center within 120 days of the date of this letter.  A copy of this letter should be attached to the ESBT election.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account distributions made by X as provided by § 1368.

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 or implied on whether X was or is otherwise eligible to be treated as an S corporation or whether Trust 1 or Trust 2 was or is otherwise eligible to be treated as an ESBT.

This ruling is directed only to the taxpayer requesting it.  Section 6110(k)(3) 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,


*Laura C. Fields*
Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)


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