

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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August 24, 2016

LEGEND

X =

Trust =

Estate =

A =

State =

Country1 =

Country2 =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear _____ :

This responds to a letter dated March 17, 2016, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code (the Code).

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date2. A established Trust as an revocable trust on Date3 and transferred shares of X to Trust. X represents that Trust was properly treated as a grantor trust for purposes of §§ 671-677 of the Code from Date3 until Date4, when A died, and was an eligible S corporation shareholder during this time pursuant to § 1361(c)(2)(A)(i). Trust continued to be an eligible S corporation from Date4 until Date5, pursuant to § 1361(c)(2)(A)(ii). X further represents that Trust would have been eligible to make an election under § 645(c) to be treated as a “qualified revocable trust” as defined in § 645(b)(1) and treated as part of A's estate (“Estate”) until the “applicable date” described in § 645(b)(2), which is six months after the date of the final determination of the liability for tax imposed by chapter 11. Such an election would have permitted Trust to continue to be an eligible S corporation shareholder from Date4 until the “applicable date” as described in § 645(b)(2). However, the trustee of Trust and the executor of Estate failed to timely file the election under § 645(c) to treat Trust as a qualified revocable trust.

According to the submission, Trust did not fail any of the eligibility requirements or restrictions provided in § 1361(e)(1)(A) and (B) in order to be an electing small business trust (“ESBT”), except that the current beneficiaries of Trust are all non-resident aliens residing in either Country1 or Country2.

X represents that X and all of X's shareholders have filed tax returns consistent with X being an S corporation since Date2. Between Date4 and Date5, Trust and Estate filed their tax returns consistent with the treatment of Trust as part of Estate. In addition, X represents that Trust has filed its tax returns consistent with its treatment as an ESBT since Date5 (with Estate treated as the sole beneficiary of Trust). X further 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 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 a 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.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date5 as the result of Trust becoming an ineligible S corporation shareholder on that date while owning X stock. We further conclude that the termination of X's S corporation election on Date5 was inadvertent within the meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date5 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

This ruling is contingent upon the trustee of Trust selling or otherwise disposing of its X stock to an eligible S corporation shareholder within 120 days of the date of this letter. This condition may also be satisfied by the liquidation and dissolution of X within the 120 day period. In addition, Trust and Estate must file federal tax returns consistent with Trust being treated as an ESBT, with Estate treated as its sole beneficiary, from Date5 to the date of final disposition of its X stock.

If the above conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S election has terminated as of Date5 to the service center with which X's S election was filed.

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 the validity of its S corporation election. Further, no opinion is expressed as to whether Trust previously qualified as a grantor trust.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury

statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the power of attorney on file with this office, we are sending copies of this letter to X's authorized representatives.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: