

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201925003**  
Release Date: 6/21/2019

Third Party Communication: None  
Date of Communication: Not Applicable

Index Number: 1361.05-00, 1362.00-00,  
1362.04-00, 9100.31-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
PLR-121148-18

Date:  
March 13, 2019

LEGEND

X =

A =

Trust1 =

Trust2 =

Trust3 =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Date6 =

N1 =

N2 =

N3 =

N4 =

Dear :

This responds to a letter dated July 2, 2018, 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 taxed as an S corporation effective on Date2. At the time of X's S corporation election, A owned N1% of X's stock. On Date3, A transferred A's shares in X to Trust1. Trust1 was a revocable trust and was properly treated as a grantor trust for purposes of § 671 of the Code from Date3 until Date4, when A died. Upon A's death, the shares of X held in Trust1 were transferred to Trust2 and Trust3. After this transfer, Trust2 owned N2% and Trust3 owned N3% of X stock.

X further represents that Trust2 and Trust3 meet the requirements of § 1361(e)(1)(A) to be Electing Small Business Trusts (ESBTs), except that ESBT elections were not timely made on behalf of Trust2 and Trust3 at the time the stock of X was transferred to Trust2 and Trust3 upon A's death on Date4. Accordingly, the S corporation election of X terminated on the date of this transfer, because Trust2 and Trust3 were ineligible S corporation shareholders of X at that time. X represents that Trust2 and Trust3 subsequently made elections to be treated as ESBTs effective on Date5.

X represents that X and all of X's shareholders have filed tax returns consistent with X being an S corporation since Date4. In addition, X represents that Trust2 and Trust3 have filed tax returns consistent with their treatment as ESBTs since Date5. 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 adjustments

consistent with the treatment of X as an S corporation, and Trust2 and Trust3 as ESBTs beginning Date4, 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 Date4, or thereafter, as the result of the failure of the trustees of Trust2 and Trust3 to make elections under § 1361(e)(3) to treat Trust2 and Trust3 as ESBTs effective as of the date of the transfer of X stock to Trust2 and Trust3. We further conclude that the termination of X's S corporation election on Date4, or thereafter, 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 Date4 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d).

Furthermore, as an adjustment under § 1362(f)(4), a payment of \$N4 and a copy of this letter must be sent to the following address: Internal Revenue Service, Kansas City Service Center, 333 Pershing Road, Kansas City, MO 64108, Stop 7777, Manual Deposit. This payment and a copy of this letter must be sent no later than Date6.

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. In addition, no opinion is expressed as to whether Trust2 and Trust3 are eligible to elect to be treated as ESBTs.

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.

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,

Adrienne M. Mikolashek  
Branch Chief, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

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

cc: