Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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Person to Contact:

Telephone Number:

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LEGEND

Company =

State =

Husband =

Wife =

Family Trust =

Trust A =

Trust B =

a =

b =

c =

d =

e =

f =

g =

h =

Dear :

This letter responds to a letter dated April 25, 2002, and subsequent correspondence, submitted on behalf of Company requesting a ruling under § 1362(f) of the Internal Revenue Code.

According to the information submitted, Company was incorporated in State on a. Company filed an election under § 1362(a) to be treated as an S corporation on b. Initially Company's shareholders were Husband and Wife, who owned their stock through the Family Trust, a revocable trust.

Upon the death of Husband, the Family Trust divided into two separate and distinct trusts, Trust A and Trust B. On d, c shares of Company stock were transferred to Trust A, a revocable trust of which Wife was the sole income beneficiary. On the same date, e shares of Company stock were transferred to Trust B. While Trust B qualified as a qualified subchapter S trust ("QSST"), no QSST election was made for Trust B. As a consequence, Company's S corporation election terminated on the date of the transfer of Company stock to Trust B, an ineligible shareholder.

The termination of Company's S election was not discovered until after the death of Wife on f. To correct the terminating event, Trust A, for which a QSST election was made on g, purchased the stock of Company from Trust B on h.

Company represents that the termination of its S corporation election was inadvertent and unintended. In addition, Company and its shareholders agree to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Service.

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which 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)(A) 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 the corporation is an S corporation) the corporation ceases to be a small business corporation.

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 termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation; 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 termination, the corporation shall 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 Company's S corporation election was terminated on d, when shares of Company's stock were first transferred to Trust B, an ineligible shareholder. We further conclude that this termination was inadvertent within the meaning of § 1362(f).

Consequently, under the provisions of § 1362(f), Company will be treated as an S corporation from d to h, and thereafter, provided that Company's S corporation election is valid and is not otherwise terminated under § 1362(d). During the termination period, Trust B will be treated as a QSST for which a proper QSST election was made. Accordingly, Company's shareholders during this period must include their pro rata share of the separately and nonseparately computed items of Company under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by Company to the shareholders under § 1368. If Company or any of Company's shareholders fail to treat Company as described above, this ruling will be null and void.

Except for the specific ruling above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding whether Company is otherwise qualified to be an S corporation and whether Trust A qualifies as a QSST.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to Company's authorized representative.

This ruling is directed only to the taxpayer requesting it. Under § 6110(k)(3), it may not be used or cited as precedent.

Sincerely yours,
CHRISTINE ELLISON
Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

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