

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B1  
PLR-117655-07  
Date: July 2 5, 2007

LEGEND:

X

Date 1 =

Date 2 =

Trust 1 =

Trust 2 =

Dear :

This responds to a letter dated April 9, 2007, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated and made an election to be treated as an S corporation effective Date 1. On Date 2, shares of X stock were transferred to Trust 1 and Trust 2. Each of Trust 1 and Trust 2 is represented as being eligible to be an electing small business trust (ESBT) as of Date 2. However, the trustees of Trust 1 and Trust 2 failed to make an ESBT election. Therefore, X's S corporation election terminated on Date 2.

X represents that the failure to file the ESBT elections for Trust 1 and Trust 2 was not motivated by tax avoidance or retroactive tax planning. X represents that X and all of its

shareholders have filed returns consistent with X's status as an S corporation since Date 1. X and its shareholders have also agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

## LAW AND ANALYSIS

Section 1361(a)(1) of the Code 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 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a PCB, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust. Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT 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 1362(d)(2) provides that (A) in general, 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) such corporation ceases to be a small business corporation and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

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 solely on the facts submitted and the representations made, we conclude that X's election to be treated as an S corporation terminated on Date 2. We also conclude that the termination constituted an "inadvertent termination" within the meaning of 1362(f). Under the provisions of 1362(f), X will be treated as continuing to be an S corporation from Date 2, and thereafter, and the trustees of Trust 1 and Trust 2 will be treated as having filed timely an ESTB election for Trust 1 and Trust 2, effective Date 2, provided that X's S corporation election is not otherwise terminated under 1362(d) and provided further that the trustees of Trust 1 and Trust 2 file an ESTB election for Trust 1 and Trust 2 with the appropriate service center, effective Date 2, within 60 days of the date of this letter. A copy of this letter should be attached to the election.

Additionally, because X will be treated as continuing to be an S corporation from Date 2, all ESBT elections, Qualified Subchapter S Trust (QSST) elections, and Qualified Subchapter S Subsidiary (Qsub) elections filed with respect to X from Date 2 to the date of this letter do not need to be refiled, provided that such elections were otherwise validly made.

Except as specifically provide herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is otherwise eligible to be an S corporation or whether Trust 1 and Trust 2 are eligible ESBTs under § 1361(e).

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

Under a power of attorney on file in this office, a copy of this letter will be sent to X's authorized representatives.

Sincerely,

David R. Haglund  
Senior Technician Reviewer, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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