

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200840027**
Release Date: 10/3/2008
Index Number: 1362.04-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-139228-07

Date:
June 17, 2008

X =

A =

B =

Trust 1 =

Trust 2 =

Trust 3 =

D1 =

D2 =

Dear :

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

X made an election to be treated as an S corporation. X stock was owned by Trust 1, a revocable trust that was treated as owned by A under §§ 671 and 676. A

died on D1. Trust 1 became an irrevocable trust (Trust 2) that continued to qualify as a permitted subchapter S trust under § 1361(c)(2)(A)(ii) which allows a trust to hold S corporation stock for a two-year period following the deemed owner's death. On D2, which was within the two-year period, the X stock in Trust 2 was transferred to Trust 3. X's election was inadvertently terminated effective D2 because B, the income beneficiary of Trust 3, did not make a timely qualified subchapter S trust (QSST) election. X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

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.

Based solely on the facts submitted and the representations made, we conclude that the termination of X's S corporation on D2 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 D2 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d).

Accordingly, all of X's shareholders, in determining their federal tax liability for that period, must include their pro rata share of the separately and nonseparately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account any distributions made by X to shareholders as provided in § 1368. This ruling shall be null and void if the requirements of this paragraph are not met.

This ruling is contingent upon B filing a QSST election for Trust 3, with an effective date of D2, with the appropriate service center within 60 days of the date of this ruling. B will be treated as the owner of the X stock held by Trust for the period

beginning D2 and thereafter. A copy of this letter should be attached to the QSST election. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. THOMAS HINES
Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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