

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200841007**  
Release Date: 10/10/2008

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 1362.04-00

, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-102481-08  
Date:  
June 30, 2008

X =

Y =

A =

D1 =

D2 =

D3 =

D4 =

Year 1 =

Trust =

1

Trust =

2

Trust =

3

Trust =

4

Trust =

5

Dear :

This responds to a letter dated January 16, 2008, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X made an election to be treated as an S corporation effective D1. A, an individual, owned X stock indirectly through Y, A's

wholly-owned limited liability company, which was a disregarded entity for federal tax purposes. On D2 of Year 1, A transferred interests in Y to each of Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 (collectively, the Trusts), which are represented as having been wholly-owned grantor trusts under § 671 with respect to A. A died on D3 of Year 1 and Y became a partnership for federal tax purposes. A partnership is not an eligible S corporation shareholder and therefore, X's S corporation election terminated on D3 of Year 1. On D4 of Year 1, Y liquidated and distributed its X stock among the Trusts.

X represents that the circumstances resulting in the termination of its S corporation election were inadvertent and were 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 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(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States may be a shareholder. Section 1361(c)(2)(A)(ii) provides that, for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be a shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

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.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3 of Year 1 and that the termination 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 D3 to D4 of Year 1 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). The shareholders of X must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

This ruling is conditioned upon X, the Trusts, the beneficiaries of the Trusts, and any other affected shareholders of X filing all returns necessary to conform to this letter. Specifically, the Trusts must file returns (or amended returns) for the Year 1 taxable year consistent with the treatment of the Trusts as the owners of their respective shares of X stock effective D3 of Year 1. As trusts described in § 1361(c)(2)(A)(ii), the Trusts will continue to be eligible shareholders for the two-year period beginning D3 of Year 1. Any amended returns must be filed within 60 days following the date of this letter and a copy of this letter should be attached to any such returns.

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. In particular, we express no opinion on whether Trusts were wholly-owned grantor trusts during the life of A or whether the Trusts are eligible to be electing small business trusts (ESBTs) within the meaning of § 1361(e).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(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