

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200919001**  
Release Date: 5/8/2009

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-128010-08  
Date:  
December 15, 2008

X =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

State =

a =

b =

c =

d =

e =

D1 =

D2 =

Dear :

This responds to a letter dated June 19, 2008 and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

## Facts

The information submitted states that X was incorporated under the laws of State and made an election to be treated as an S corporation effective D1. Trust 1, established by A and A's spouse, held a% of the shares of X stock. A's spouse died on D2. At that time, Trust 1 was divided into Trust 2, Trust 3, Trust 4, and Trust 5, under the terms of Trust 1. After the division, Trust 2, Trust 3, Trust 4, and Trust 5 held b%, c%, d%, and e% of the outstanding shares of X, respectively.

A, the current income beneficiary of Trust 2, Trust 3, and Trust 4, failed to file valid Qualified Subchapter S Trust (QSST) elections for Trust 2, Trust 3, and Trust 4, causing X's S election to terminate on D2.

X represents that the failure to file the QSST elections for Trust 2, Trust 3, and Trust 4 was not motivated by tax avoidance or retroactive tax planning. X represents that at all relevant times, X and its shareholders treated X as an S corporation and filed their tax returns accordingly. 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.

## Law and Analysis

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of § 1361(b)(1)(B), trusts that may be shareholders include a trust all of which is treated as owned by an individual who is a citizen or resident of the United States.

Section 1361(d)(1) provides in part that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i).

Section 1361(d)(3) provides that the term "qualified subchapter S trust" means a trust - (A) the terms of which require that - (i) during the life of current income beneficiary, there shall be only 1 income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the

termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever 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) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the 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 of inadvertent termination of the S election, 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 is 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 D2. 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 D2 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). Trust 2, Trust 3, and Trust 4 will be treated as QSSTs from D2 and thereafter. 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 A filing appropriately completed QSST elections for Trust 2, Trust 3, and Trust 4, effective D2. The QSST elections must be filed within 60 days following the date of this letter and a copy of this letter should be attached to such elections.

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 an S corporation for federal tax purposes; whether Trust 1 and Trust 5 were trusts permitted as shareholders of an S Corporation under § 1361(c)(2); or whether Trust 2, Trust 3, and Trust 4 are QSST's under § 1361(d).

This ruling is directed only to the taxpayer requesting 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,

Melissa C. Liquerman  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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