

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

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PLR-112163-14

Date:
July 17, 2014

LEGEND

X =

Trust =

Shareholder =

State =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear _____ :

This letter responds to a letter dated March 5, 2014, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

X was incorporated under the laws of State on D1 and elected to be an S corporation effective D1. On D2, Shareholder transferred all of his shares of X stock to Trust, but was treated as the owner of the X stock under the Code. Shareholder died on D3, and, on D4, Trust was no longer a permitted shareholder. Therefore, X's S corporation election terminated on D4. Trust transferred all of its shares of X stock to permitted shareholders on D5.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that X and its shareholders have filed consistently with the treatment of X as an S corporation since D1. 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 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) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) 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, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(c)(2)(A)(i) provides that a trust, all of which is treated (under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code) as owned by an individual (whether or not the grantor) who is a citizen or resident of the United States (a qualified subpart E trust), is a permitted shareholder.

Section 1361(c)(2)(A)(ii) provides that a trust that is a qualified subpart E trust immediately before the death of the deemed owner that continues in existence after such death is a permitted shareholder, but only for the two-year period beginning on the day of the deemed owner's death.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will 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.

Section 1362(f) provides, in relevant part, 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 the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken (A) 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 will be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(b) provides, in relevant part, that for purposes of § 1.1362-4(a), the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation or was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination was inadvertent.

Section 1.1362-4(d) provides, in part, that the Commissioner may require any adjustments that are appropriate. In general, the adjustments should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D4. We also conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as an S corporation from D4 and thereafter, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation.

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.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes