

Internal Revenue Service

Number: **201515010**
Release Date: 4/10/2015
Index Number: 1362.04-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-125251-14
Date:
December 16, 2014

LEGEND:

X =

A =

B =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

\$n =

Dear

This responds to a letter dated June 17, 2014, and subsequent correspondence, submitted on behalf of X, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code (the Code).

Facts

The information submitted states that X was incorporated under the laws of State. X elected to be taxed as an S corporation effective Date 1.

During A's life, A owned shares in X through Trust 1, a grantor trust. A died on Date 2. Pursuant to the terms of Trust 1, after A's death, the X shares were transferred from Trust 1 to Trust 2 on Date 3. X represents that Trust 2 was qualified to be an Electing Small Business Trust (ESBT), within the meaning of § 1361(e). However, no election was made under § 1361(e)(3) to treat Trust 2 as an ESBT. Consequently, Trust 2 was an ineligible shareholder, and, as a result, X's S corporation election terminated on Date 3.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law and Analysis

Section 1362(f) provides 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 such termination were inadvertent; (3) no later than a reasonable period of time after 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 specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) of the Income Tax Regulations provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required 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 representation made, we conclude X's S election terminated on Date 3 upon the failure to timely file an ESBT election for Trust 2. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will continue to be treated as an S corporation on and after Date 3, unless X's S corporation is otherwise terminated under § 1362(d). The trustee of Trust 2 must file an ESBT election effective Date 3 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election.

Accordingly, the shareholders of X must include in their income their pro rata share of separately stated and nonseparately computed items of X as provided in § 1366 and make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. This ruling is contingent upon X and each of its shareholders filing any original and amended returns and making such adjustment that are necessary to properly reflect the reporting of X's items of S corporation income. Specifically, Trust 2 must file income tax returns and make adjustments that are necessary to properly reflect the treatment of Trust 2 as an ESBT.

Additionally, as an adjustment under § 1362(f)(4), this ruling is conditioned on the payment of \$n and a copy of this letter ruling must be sent to the address: Internal Revenue Service, Cincinnati Service Center,

. X must send the payment no later than Date 4.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust 2's ability to be an ESBT.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

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