

Internal Revenue Service

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Person To Contact:
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Telephone Number:

Refer Reply To:
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Date:
March 18, 2016

LEGEND

X =

Trust1 =

Trust2 =

A =

B =

C =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear _____ :

This responds to a letter dated October 16, 2015, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date1. On Date1 the stock of X was owned by A, B, and C. A died on Date2. A's shares of X were transferred from A's estate to Trust1 on Date3. However, the trustee of Trust1 failed to timely file the election under § 1361(e) to treat Trust1 as an electing small business trust ("ESBT") effective Date3. In addition, B died on Date4. B's shares of X were transferred from B's estate to Trust2 on Date5. However, the trustee of Trust2 failed to timely file the election under § 1361(e) to treat Trust2 as an ESBT effective Date5.

X represents that X and all of X's shareholders have filed tax returns consistent with X being an S corporation since Date2. In addition, X represents that Trust1 and Trust2 have filed tax returns consistent with their treatment as ESBTs since their respective dates of formation and transfers of X stock to them. X further 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. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by a 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 Date3 as the result of the transfer of X

stock to Trust1 as of that date. We further conclude that the termination of X's S corporation election on Date3 was inadvertent within the meaning of § 1362(f). In addition, X's S corporation election would have terminated on Date5 due to the transfer X stock to Trust2, if X's S election had not already terminated on Date3, and that this subsequent terminating event was also inadvertent. We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date3 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d) for reasons other than these two terminating events.

This ruling is contingent upon the trustee of Trust1 filing an ESBT election on behalf of Trust1 with an effective date of Date3 and the trustee of Trust2 filing an ESBT election on behalf of Trust2 with an effective date of Date5. These elections must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each election.

If the above conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S election has terminated to the service center with which X's S election was filed.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1 or Trust2 qualify as ESBTs, or on the income or transfer tax consequences of the transfer of shares of X to Trust1 or Trust2.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: