

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-106358-06

Date: September 25, 2006

LEGEND

X =

Trust 1 =

Trust 2 =

Trust 3 =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear _____ :

This letter responds to a letter dated January 11, 2006, and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date 1 in accordance with the laws of State and elected to be treated as an S corporation effective Date 1. Until Date 2, A was the sole shareholder of X. On Date 2, shares of X were transferred to Trust 1 and Trust 2. Trust 1 and Trust 2 were both ineligible shareholders under § 1361. As a result, X's S corporation election terminated on Date 2.

X further represents that, upon discovering that Trust 1 and Trust 2 were ineligible shareholders, the following corrective actions were taken: (1) On Date 3, all of the shares in X held by Trust 1 were transferred to Trust 3, a permitted shareholder under § 1361(c)(2)(A)(i); (2) On Date 4, all of the shares in X held by Trust 2 were transferred to individuals B and C.

X represents that there was no intent to terminate X's S corporation election and that X was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments required by the Secretary consistent with the treatment of X as an S corporation.

LAW AND ANALYSIS

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) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and that 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 1362(f) provides that if (1) an election under § 1362(a) by an corporation was terminated under paragraph (2) or (3) of § 1362(d), (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 termination, steps were taken so that the corporation is once more 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 any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as continuing to be an S corporation during the period specified by the Secretary.

CONCLUSION

Based on the information submitted and the representations made, we conclude that X's subchapter S election terminated on Date 2 because shares in X were transferred to ineligible shareholders. In addition, we conclude that the termination was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as continuing to be an S corporation from Date 2, and thereafter, provided that X's S election was not otherwise invalid or terminated under § 1362(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed concerning whether X is otherwise eligible to be treated as an S corporation.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Audrey W. Ellis
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for § 6110 purposes