

Internal Revenue Service

Number: **200722022**

Release Date: 6/1/2007

Index Number: 1362.02-00

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:B02

PLR-155090-06

Date:

February 09, 2007

X =

A =

Trust =

State =

Court =

D1 =

D2 =

D3 =

D4 =

Dear :

This responds to a letter dated October 11, 2006, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling as to whether X's subchapter S election was terminated on D3.

The information submitted states that X was incorporated in State on D1. X made an election to be treated as an S corporation effective D2. X's Articles of Incorporation provide that any shareholder wishing to sell or transfer their shares must first give notice to the corporation, and provide the other shareholders the opportunity to purchase the shares before they are sold or transferred. X's Articles of Incorporation further provides that any sale or transfer of shares in violation of these requirements is null and void.

On D3, A attempted to transfer all of his shares in X to Trust. On D4, in connection with a pending civil suit for dissolution of X, Court entered an order holding that the attempted transfer of A's shares in X to Trust was null and void and that A remained the record and legal owner of all of the shares he attempted to transfer to Trust.

Section 1362(a) of the Internal Revenue Code 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.

Sections 1362(d)(2)(A) provides that an S election terminates whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Based solely on the facts and representations submitted, because A's transfer of X shares to Trust was void ab initio under State law as determined by Court, we conclude that X's S corporation election did not terminate on D3. Accordingly, as Trust was never a shareholder of X, X will be treated as continuing to be an S corporation from D3, and thereafter, provided X's S corporation election was valid, and has not otherwise terminated under the provisions of § 1362(d).

X and all its current and prior shareholders must treat X as having been an S corporation for the period from D3 to the present. In addition, X and its shareholders must treat A as having been the shareholder of the X shares which A attempted to transfer to Trust and amend any prior tax returns that are inconsistent with this treatment.

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, including whether X was or is a small business corporation under § 1361(b) of the Code.

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.

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

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2

Copy of this letter

Copy for § 6110 purposes