

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200827002**  
Release Date: 7/4/2008

Index Number: 1361.00-00, 1361.03-00,  
1362.00-00, 1362.04-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B01  
PLR-101989-08

Date:  
April 04, 2008

### LEGEND

X =

Trust A =

Trust B =

Trust C =

Trust D =

State =

Date 1 =

Date 2 =

Date 3 =

Dear

This responds to a letter dated January 14, 2008, submitted on behalf of X by X's authorized representative, requesting inadvertent invalid election relief pursuant to § 1362(f) of the Internal Revenue Code.

### FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X represents that it timely filed an S corporation election which was intended to be effective on Date 2.

On Date 2, Trust A's assets included shares of X stock. Trust A provided that Trust A's assets were to be divided into three separate trusts, Trust B, Trust C, and Trust D (collectively, Trusts). The trustee of Trust A failed to divide Trust A. The trustee of Trust A filed an electing small business trust (ESBT) election for Trust A effective Date 2. X represents that each of Trust B, Trust C, and Trust D was eligible to be an electing small business trust effective Date 2 and thereafter. However, no elections to be electing small business trusts were filed on behalf of Trust B, Trust C, and Trust D. Therefore, the Trusts were not permissible shareholders, and X's S corporation election was ineffective.

X represents that the circumstances resulting in the invalidity 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 in effect for X. 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.

### 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)(B) provides, in part, that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an electing small business trust may be a shareholder.

Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), the term “electing small business trust” means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4), or (5) of § 170(c), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) provides that the trustee of the trust must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1362(f) provides that if (1) an election under § 1362(a) by any 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 paragraph (2) or (3) of § 1362(d); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the representations made and the information submitted, we conclude that X's S corporation election was ineffective on Date 2 because X had ineligible shareholders. We also conclude that the election was inadvertently invalid under § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as

an S corporation from Date 2 and thereafter, provided that the trustee of each of Trust B, Trust C, and Trust D files an ESBT election, pursuant to the procedures set forth in § 1.1361-1(m)(2) effective Date 2, with the appropriate service center within 60 days of the date of this letter, and provided that X's election to be an S corporation was not otherwise invalid and was not terminated under § 1362(d). A copy of this letter should be attached to the ESBT elections.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of any aspect of the transactions described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X was or is otherwise eligible to be an S corporation or whether the Trusts are otherwise eligible to be ESBTs.

This ruling letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it 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,

*Audrey W. Ellis*

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

Enclosures (2)

Copy of this letter

Copy for §6110 purposes

cc: