

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:B03

PLR-111530-10

Date:

August 19, 2010

Legend

Company =

State =

D1 =

D2 =

D3 =

Trust =

A =

Dear :

This letter responds to a letter dated March 12, 2010, and subsequent correspondence, submitted on behalf of Company by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted states that Company was incorporated under the laws of State on D1 and elected to be treated as an S corporation effective D2. Shares of Company stock were transferred to Trust on D3. It is represented that Trust was

eligible to elect qualified subchapter S trust (QSST) treatment under § 1361(d). However, A, the sole beneficiary of Trust, inadvertently failed to make a timely QSST election under § 1361(d)(2). Therefore, Company's S corporation election terminated on D3.

Company represents that the presence of an ineligible shareholder and the termination of its S corporation election was inadvertent and not motivated by tax avoidance. Company further represents that at all times subsequent to D3, Company and its shareholders have treated Company as an S corporation and filed returns as if Trust were a QSST. In addition, Company and its shareholders agree to make such adjustments, consistent with the treatment of Company as an S corporation and Trust as a QSST, as may be required by the Secretary.

Law

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) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which 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 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of Chapter 1) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply. Section 1361(d)(2)(D) provides that an election under § 1361(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

Section 1361(d)(3) defines a QSST as a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the

current income beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(a)(1) 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 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated 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.

Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, 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 such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in 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 such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based on the facts submitted and representations made, we conclude that Company's S corporation election terminated on D3 as a result of the transfer of Company stock to Trust. We also conclude that the termination of Company's status as an S corporation was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), Company will be treated as continuing to be an S corporation from D3, and thereafter, provided that Company's S corporation election was otherwise

valid and not otherwise terminated under § 1362(d), and provided that A files a QSST election for Trust with an effective date of D3 with the appropriate service center within 120 days following the date of this letter. A copy of this letter should be attached to the QSST election.

From D3 and thereafter, Trust will be treated as a QSST described in § 1361(d)(3) (assuming the trust otherwise qualifies as a QSST), and A will be treated as the owner of the Company stock held by Trust. Accordingly, Company's shareholders, in determining their respective income tax liabilities during the termination period and thereafter, must include their pro rata share of the separately stated items of income (including tax-exempt income), loss, deduction, or credit and non-separately computed items of income or loss of Company as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by Company as provided by § 1368. If Company, or any of the shareholders, fail to treat Company as described above, this ruling shall be void.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether Company is otherwise eligible to be an S corporation or whether Trust is eligible to be a QSST.

This ruling 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.

The ruling contained in this letter is 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 ruling request, 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 Company's authorized representative.

Sincerely,

/s/

Tara P. Volungis
Acting Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of letter for § 6110 purposes

Copy of letter

cc: