

## Internal Revenue Service

Number: **201201006**  
Release Date: 1/6/2012

Index Number: 1361.01-00, 1361.03-03,  
1362.00-00, 1362.01-03, 1362.02-00,  
1362.04-00

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:B01  
PLR-116224-11

September 01, 2011

### Legend:

X =

Trust A =

Trust B =

Trust C =

Trust D =

Trust E =

Trust F =

State =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated April 11, 2011 submitted on behalf of X by X's authorized representative, requesting inadvertent S corporation election termination relief under § 1362(f). In addition, your letter seeks relief allowing Trust A, Trust B, Trust C, Trust D, Trust E, and Trust F to file late elections to be treated as electing small business trusts (ESBTs).

### FACTS

According to the information submitted, X was incorporated under the laws of State on Date 1. X elected to be an S Corporation effective Date 2 and intended to have Trust A, a shareholder of X, file an ESBT election to be effective Date 2. However, there is no record of the ESBT election being filed.

On Date 3, all shares of X stock were transferred from Trust A to Trust B, Trust C, Trust D, Trust E and Trust F. However, the trustees of Trust B, Trust C, Trust D, Trust E and Trust F failed to make ESBT elections for the trusts.

Trust B, Trust C, Trust D, Trust E and Trust F are represented as being eligible to be ESBTs as of Date 3 and Trust A is represented as having been eligible to be an ESBT from Date 2 until Date 3. X represents that the failure to file the ESBT elections and the consequent termination of X's election to be an S corporation, was inadvertent, unintended, and not the result of tax avoidance or retroactive tax planning. X and each person who is or was a shareholder of X agree to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

### 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 that for purposes of subchapter S, a "small business corporation" cannot 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 the purposes of § 1362(b)(1)(B), an ESBT is a permitted shareholder of a small business corporation.

Section 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(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, (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 1362(f) provides, in part, 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 (B) was terminated under § 1362(d)(2) or (3); (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 so that the corporation is 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 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 ineffectiveness or termination, the 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 made on Date 2 may have been invalid because of a failure to file an ESBT election for Trust A effective as of Date 2 and that such failure was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as an S corporation beginning Date 2 and continuing thereafter, unless X's S corporation election is otherwise terminated.

This ruling is contingent upon the filing of an election to treat Trust A as an ESBT effective Date 2 and the filing of elections to treat Trust B, Trust C, Trust D, Trust E, and Trust F as ESBTs effective Date 3 with the appropriate service center. A copy of this

letter must be attached to the elections.

Further, X and all of its shareholders must file amended returns to the extent necessary to treat X as an S corporation for the period beginning Date 2; Trust A as an ESBT from Date 2 until Date 3; and Trust B, Trust C, Trust D, Trust E, and Trust F as ESBTs as of Date 3 and thereafter. Accordingly, in determining their respective income tax, all the shareholders of X must include their pro-rata share of the separately stated items of income, loss, deduction, or credit and nonseparately computed items of income and loss of X as provided in § 1366, make adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. Within 120 days from the date of this letter,

Except as specifically ruled upon above, we express or imply no opinion as to the federal tax consequences of the facts of the facts described above under any other provision of the Code. In particular, we express or imply no opinion concerning whether X is otherwise eligible to be an S corporation, or whether Trust A, Trust B, Trust C, Trust D, Trust E, and Trust F are eligible to be ESBTs under § 1361(e).

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.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

Faith P. Colson  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures:

Copy of this letter

Copy for ' 6110 purposes