

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND

Company =

State =

Trust =

Date1 =

Date2 =

Dear :

This letter responds to a letter dated August 5, 2011, and subsequent correspondence, written on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

Company is a State corporation that elected to be an S corporation effective Date1. On Date2, shares of Company's stock were transferred to Trust. Company represents that Trust is eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) effective Date2. However, the trustee of Trust failed to make an election under § 1361(e)(3) to treat Trust as an ESBT. As a result, Trust was not a permissible shareholder, and Company's S corporation election terminated on Date2.

Company represents that the circumstances resulting in the termination of Company's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. For all relevant taxable years, Company and Company's shareholders have filed their federal income tax returns consistent with Company's status as an S corporation and Trust has filed consistent with Trust having a valid ESBT election in effect since Date2. In addition, Company and Company's shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

LAW

Section 1361(a) 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, 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 ESBT is a permitted shareholder of an S corporation.

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) the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in § 170(c)(2), (3), (4), or (5), or an organization described in § 170(c)(1) that holds a contingent interest in the trust and is not a potential current beneficiary; (ii) no interest in the trust was acquired by purchase; and (iii) an election under § 1361(e) applies to the 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(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

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 to obtain shareholder consents, 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 (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 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, 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 Company's S corporation election terminated on Date2 when shares of Company's stock were transferred to Trust. We also conclude that the termination of Company's S corporation election was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), Company will be treated as an S corporation from Date2, and thereafter, provided that Company's S corporation election was valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the trustee of Trust filing an election to treat Trust as an ESBT, effective Date2, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election.

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

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to Company's authorized representatives.

Sincerely,

/s/

Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for Section 6110 purposes

cc: