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Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

CC:PSI:B01

PLR-137310-11

Date:

March 02, 2012

Legend

X =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

Trust5 =

Trust6 =

Trust7 =

Trust8 =

State =

Date1 =

Date2 =

Date3 =

Dear :

This responds to a letter dated July 25, 2011, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was established under the laws of State on Date1. X elected to be an S corporation for federal tax purposes effective Date2. On Date3, all shares of X stock were transferred to Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8, with the intent that ESBT elections be filed to for each trust. However, the trustees of Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8 failed to make the ESBT elections.

X represents that Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8 are eligible to be ESBTs as of Date3. X represents that the failure to file the ESBT elections and the possible termination of X's election to be an S corporation was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X also represents that all income has been reported on all affected federal tax returns of X and all of its shareholders consistent with the treatment of X as an S corporation and Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8 as ESBTs. X and its shareholders agree to make any adjustments required by the Secretary 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(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, 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 1361(f) provides, in part, that if (1) an election made under § 1361(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 time 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 status as an S corporation may have terminated on Date3 because of the failure to file ESBT elections for Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8, and that such failure was inadvertent within the meaning of § 1362(f).

Further, we conclude that, pursuant to § 1362(f), X will be treated as continuing to be an S corporation from Date3 and thereafter, assuming X's S election is valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon the filing of elections, within 120 days of the date of this letter, to treat Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8 as ESBTs, effective Date3, with the appropriate service center. A copy of this letter should be attached to each ESBT election. X and its shareholders must also file any necessary original or amended returns consistent with the relief granted within 120 days following the date of this letter.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the

Code, including whether X was otherwise a valid S corporation or whether Trust1, Trust2, Trust3, Trust4, Trust5, Trust6, Trust7, and Trust8 are otherwise valid ESBTs.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Joy C. Spies

Joy C. Spies

Acting Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: