

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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LEGEND

Company =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Year =

State =

Trust1 =

Trust2 =

A =

Dear _____ :

This letter responds to a letter dated December 27, 2011, and subsequent correspondence, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, Company was incorporated under the laws of State on Date 1, and elected to be an S corporation effective Date2. On Date3, stock in Company was transferred to Trust1. At all times prior to and after the stock transfer, Trust1 met the definition of a “qualified subchapter S trust” (QSST) under § 1361(d)(3). However, due to inadvertence, A, the income beneficiary of Trust1, failed to file an election with the service center under § 1361(d)(2) to treat Trust1 as an eligible S corporation shareholder under § 1361(c)(2)(A)(i). Consequently, Company's S corporation election terminated on Date4. On Date5, Trust1 transferred stock in Company to Trust 2.

While preparing the Year federal income tax return for Trust1, Company return preparers learned that Company's S corporation election had terminated on Date4, because of the failure to file a QSST election for Trust1.

Company represents that there was no intent to terminate Company's S corporation election and that the termination was inadvertent and not motivated by tax avoidance or retroactive tax planning. Company and its shareholders have treated Company as an S corporation since Date2. In addition, Company and its shareholders agree to make any adjustments consistent with the treatment of Company as an S corporation as may be required by the Secretary.

LAW AND ANALYSIS

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 section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a “small business corporation” as 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 1 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 of the Internal

Revenue Code) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(c)(2)(A)(iii) provides that for purposes of § 1361(b)(1)(B), a trust with respect to stock transferred to it pursuant to the terms of a will may be a shareholder, but only for the 2-year period beginning on the day on which such stock is transferred to it.

Section 1361(d)(1)(A) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), (A) the trust is treated as a trust described in § 1361(c)(2)(A)(i), and (B) for purposes of § 678(a), the beneficiary of the trust is 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 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 statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

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, that if (1) an election under 1362(a) by any corporation was terminated under paragraph § 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 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 termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Company's S corporation election terminated on Date4 because A failed to make an election under § 1361(d)(2)(A) for Trust1. 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 continuing to be an S corporation from Date4 and thereafter, provided that Company's S corporation election was valid and was not otherwise terminated under § 1362(d), and provided that A files elections under § 1361(d)(2)(A) for Trust1 and Trust2 with effective dates of Date4 and Date5 respectively with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the elections under § 1361(d)(2)(A).

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 as to whether Company is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 your authorized representatives.

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: