

## 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:B02

PLR-118955-12

Date:

September 20, 2012

### LEGEND

Company =

X =

Y =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear \_\_\_\_\_ :

This responds to a letter dated May 1, 2012, and additional correspondence, submitted on behalf of Company, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that Company was formed in State on Date 1. Immediately before Date 2, Company's shareholders were X, Trust 1, and Trust 2. Company represents that Trust 1 and Trust 2 were eligible to be electing small business trusts (ESBTs) within the meaning of § 1361(e).

On Date 2, X transferred an interest in Company to Y, an ineligible shareholder. Company made an election to be treated as an S corporation effective Date 3, however such election was invalid because Company had an ineligible shareholder, Y, on the effective date. Also on Date 3, Trust 1 and Trust 2 timely filed elections to be ESBTs. On Date 4, X and Y entered into a transaction that caused the transferred interest in Company to once again be owned by an eligible shareholder.

Company represents that its S corporation invalid election was inadvertent and not motivated by tax avoidance or retroactive tax planning. Company also represents that all income has been reported on all affected returns of Company and all of its shareholders consistent with the treatment of Company as an S corporation, and that neither Company nor any of its shareholders intended to make an invalid Subchapter S election. Company and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of Company as an S corporation.

Section 1362(f) provides 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 the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that the ineffectiveness of Company's S corporation election constituted an inadvertent invalid election within the meaning of section 1362(f). Therefore, Company will be treated as an S corporation effective Date 3 and thereafter, provided Company's S corporation election was otherwise valid and not otherwise terminated under section 1362(d).

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to Company's authorized representatives.

Sincerely,

Richard Probst  
Senior Technician Reviewer, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for § 6110 purposes

cc: