

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:02
PLR-100518-13

Date:
June 11, 2013

LEGEND

X =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

This letter responds to a letter dated November 5, 2012, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that after incorporating under the laws of State, X elected to be an S corporation effective Date 1. A, X's sole shareholder, transferred all of the stock in X to Trust 1, a wholly owned grantor trust. On Date 2, Trust 1 transferred 50 percent of the stock in X to Trust 2. X represents that Trust 2 satisfied the requirements of a Qualified Subchapter S Trust ("QSST") within the meaning of § 1361(d)(3); however, the sole income beneficiary failed to make a timely QSST election under § 1361(d)(2) causing X's S election to terminate.

On Date 3, A died and by operation of the governing instrument, Trust 1 transferred the remaining 50 percent of the stock in X to Trust 3. X represents that Trust 3 qualifies as an Electing Small Business Trust ("ESBT") within the meaning of § 1361(e)(1); however the trustee failed to make a timely ESBT election. The trustee's failure to make a timely ESBT election would have terminated X's S corporation election had it not already terminated.

X represents that the circumstances resulting in the termination of X's S corporation status were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X further represents that at all times X and its shareholders reported income consistent with X's treatment as an S corporation, Trust 2's treatment as a QSST, and Trust 3's treatment as an ESBT. X and its shareholders have agreed to make such adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

Section 1361(a)(1) of the Code 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.

Section 1361(b)(1) provides in relevant part that "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 subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual.

Section 1361(d)(1)(A) provides that a QSST, within the meaning of § 1361(d)(3), may be a shareholder for purposes of § 1361(b)(1)(B). Section 1361(c)(2)(A)(v) provides that an ESBT, within the meaning of § 1361(e)(1), may be a shareholder for purposes of § 1361(b)(1)(B).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation 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 was terminated under paragraph (2) or (3) of § 1362(d); (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, steps were taken so that the corporation is a small business corporation; and (4) the corporation and each person

who was a shareholder in 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.

Based on the information submitted and representations made, we conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Based on the provisions of § 1362(f), X will be treated as an S corporation from Date 1 and thereafter, provided that X's S corporation election was not otherwise ineffective or terminated under § 1362(d) for reasons not addressed in this letter. This ruling is contingent upon the beneficiary of Trust 2 filing a QSST election effective Date 2, and upon the trustee of Trust 3 filing an ESBT election effective Date 3. The elections must be filed with the appropriate service center within 120 days of the date of this ruling and should include a copy of this letter. A copy of this letter is provided for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust 1 qualifies as a grantor trust, whether Trust 2 qualifies as a QSST, or whether Trust 3 qualifies as an ESBT.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

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,

Charlotte Chyr
Senior Technician Reviewer, Branch 2
(Passthroughs & Special Industries)

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