

Internal Revenue Service

Department of the Treasury
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- Legend
- Company 1 =
- Company 2 =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Trust 1 =
- Trust 2 =
- Trust 3 =
- Trust 4 =
- Trust 5 =
- Trust 6 =

Dear _____ :

This letter responds to a letter dated April 5, 2013, and subsequent correspondence, submitted on behalf of Company 2 by Company 2's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Company 1 incorporated in State on Date 1, and elected to be an S corporation effective Date 2. On Date 3, shares of Company 1 stock were transferred to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6. Company 2 represents Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 were eligible to be qualified subchapter S trusts (QSSTs) within the meaning of § 1361(d)(3) and have been treated as though a timely QSST election had been made. However, neither the trustees and the current income beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 nor the IRS have been able to confirm the filing of the QSST elections for any of the trusts. Therefore, Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 were not eligible shareholders, and, as a result, Company 1's S corporation election terminated on Date 3.

On Date 4, Company 2 represents that Company 1 restructured its businesses by creating Company 2, engaging in a tax-free reorganization under § 368(a)(1)(F). As a result of this restructure, Company 2 is treated for Federal income tax purposes as a continuation of Company 1.

Company 2 represents that the circumstances resulting in the termination of Company 1's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Company 2 and its shareholders have agreed to make any adjustments consistent with the treatment of Company 1 and Company 2, as its successor, as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

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, 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)(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) as owned by an individual who is a citizen or resident of the United States may be a shareholder. Section 1361(c)(2)(A)(ii) provides that, for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be a shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under section 1362(d)(2) will be treated as a trust described in section 1361(c)(2)(A)(i),

and the QSST's beneficiary will be treated as the owner (for purposes of section 678(a)) of that portion of the QSST's S corporation stock to which the election under section 1361(d)(2) applies. Under section 1361(d)(2)(A), a beneficiary of a QSST may elect to have section 1361(d) apply. Under section 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) defines a QSST as a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust; (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary; (iii) the income interest of the current beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust; and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to that beneficiary; and (B) all of the income (within the meaning of section 643(b) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st 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 § 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.

Section 1.1362-4(b) provides, in relevant part, that for purposes of § 1.1362-4(a), the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation and was not part of a plan to terminate the election, or the fact that the terminating event or circumstance took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself against such an event or circumstance, tends to establish that the termination was inadvertent.

Section 1.1362-4(d) provides, in part, that the Commissioner may require any adjustments that are appropriate. In general, the adjustments should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Based solely on the facts submitted and representations made, we conclude that Company 1's S corporation election terminated on Date 3, when stock in Company 1 was transferred to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 because the beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 failed to timely file the required QSST election under § 1361(d)(3). We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Company 1 and Company 2, as a successor of Company 1, will be treated as continuing to be an S corporation on and after Date 3, provided that the beneficiaries of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 each file a QSST election with the appropriate service center within 120 days of this letter to be effective Date 3. A copy of this letter should be attached to each QSST election.

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 regarding whether Company 1 or Company 2 are otherwise eligible to be treated as an S corporation or whether Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, and Trust 6 are eligible to be treated as QSSTs. 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. Pursuant to a power of attorney on file, a copy of this letter is being sent to Company 2's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

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

cc: