

X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective Date 2. On Date 3, shares of X's stock were transferred to Trust. X represents that Trust was qualified to be an Electing Small Business Trust (ESBT), within the meaning of § 1361(e), however, no election was made under § 1361(e)(3) to treat Trust as an ESBT. Consequently, Trust was an ineligible shareholder, and, as a result, X's S corporation election terminated on Date 3.

X represents that there was no intent to terminate X's S corporation election and that the failure to timely file the ESBT election for Trust was inadvertent and not motivated by tax avoidance or retroactive tax planning. In addition, X and X's shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law and Analysis

Section 1362(f) provides, in relevant part, 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 of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

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

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was terminated on Date 3 upon the failure to timely file an ESBT election for Trust. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be continue to be treated as an S corporation on and after Date 3, unless X's S corporation election is otherwise terminated under § 1362(d). The trustee of Trust must file an ESBT election effective Date 3 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election.

Accordingly, the shareholders of X must include in their income their pro rata share of separately stated and nonseparately computed items of X as provided in § 1366 and make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. This ruling is contingent upon X and each of its shareholders filing any original and amended returns and making such adjustments that are necessary to properly reflect the reporting of X's items of S corporation income. Specifically, Trust must file income tax returns and make adjustments that are necessary to properly reflect the treatment of Trust as an ESBT.

Additionally, as an adjustment under § 1362(f), this ruling is conditioned on the payment of \$n with a copy of this letter ruling sent to the following address:

Internal Revenue Service
Cincinnati Service Center
201 West Rivercenter Blvd.
Covington, KY 41011, Stop 31
Terri Lackey, Manual Deposit.

X must send the payment no later than Date 4.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust's eligibility to be 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 who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Stacy L. Short
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

A copy of this letter
A copy for § 6110 purposes

cc: