

within the meaning of § 1361(e) effective Date 3. However, the trustee of Trust failed to properly file the ESBT election. As a result, Trust was not a permissible shareholder and X's S corporation election terminated on Date 3.

X represents that the failure to file the ESBT election for Trust and the resulting termination of X's S corporation election was not motivated by tax avoidance or retroactive tax planning. X represents that after it discovered the possible terminating event, X initiated corrective action. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X 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 termination of X's S corporation election on Date 3 was inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). This ruling is contingent on the trustee of Trust filing an electing small business trust (ESBT) election pursuant to the procedures in § 1.1361-1(m)(2) with an effective date of 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. If X or its shareholders fail to treat themselves as described above, this letter shall be null and void.

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. Specifically, we express no opinion as to whether X is otherwise eligible to be treated as an S corporation or Trust is eligible to be treated as an ESBT.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) 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.

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.

Sincerely,

Bradford R. Poston
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(Passthroughs & Special Industries)