

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:B3

PLR-122761-16

Date: January 13, 2017

LEGEND

X =

A =

Trust =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

n =

Dear _____ :

This letter responds to a letter dated July 19, 2016, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that X, was formed as a corporation under the laws of State on Date 1. X converted to a limited liability company under the laws of State on Date 2. A died on Date 3. X elected to be an S corporation effective Date 4. On Date 5, the estate of A transferred n% of X shares to Trust.

Trust qualified under §1361(c)(2)(A)(iii) as an eligible S corporation shareholder for a two-year period beginning when the shares of X were transferred to it Date 5. A timely election to treat Trust as an Electing Small Business Trust (ESBT) was not made Date 6, thus causing X's S election to terminate on Date 6. Beginning Date 6, X represents that Trust was a trust that met the qualifications to be an ESBT, except that no ESBT election had been timely filed on the behalf of Trust.

X represents that X has filed tax returns consistent with X being an S corporation since Date 6. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. 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.

LAW

Section 1362(f) provides, in part, 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 required 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.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 6 when the trustee of Trust failed to file an ESBT election under § 1361(e)(3) for Trust. We further conclude that the termination of X's S corporation election on Date 6 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 on Date 6 and thereafter, provided that X's S corporation election was valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon the trustee of Trust filing an ESBT election on behalf of Trust with an effective date of Date 6. This election must be filed with the appropriate service center within 120 days of the date of this letter ruling. A copy of this letter should be attached to the election.

If the above conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S corporation election has terminated to the service center with which X's S corporation election was filed.

Except as specifically set forth above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, we express no opinion regarding whether X is eligible to be an S corporation or whether Trust is eligible to be an ESBT.

The ruling contained in this letter is 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 ruling request, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Bradford R Poston
Senior Counsel, Branch 3
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy for § 6110 purposes