

## 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:B03

PLR-115389-17

Date:

July 06, 2017

### LEGEND

X =

Trust =

State =

Year =

A =

B =

C =

Date1 =

Date2 =

Date3 =

Date4 =

N1 =

N2 =

Dear \_\_\_\_\_ :

This responds to a letter dated May 8, 2017, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under §1362(f) of the Internal Revenue Code ("Code").

The information submitted states that X was incorporated under the laws of State on Date1 and elected to be an S corporation effective on that date. Under a trust agreement dated Date2, A and B established Trust as an irrevocable trust for the benefit of C. On Date2, A and B transferred N1 shares of stock of X to Trust. On Date3, A and B transferred an additional N2 shares of stock of X to Trust.

X represents that C is an individual and a citizen of the United States. X further represents that, pursuant to the trust agreement for Trust (including the exercise of powers by special trustee of Trust executed on Date4), Trust meets the requirements as a Qualified Subchapter S Trust (QSST), except that no QSST election had been timely filed by C on behalf of Trust effective on Date2.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date2. 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 each person who was or is a shareholder of X at any time since Date2 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 such period.

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 a "small business corporation" means a domestic corporation that is not an ineligible corporation and that 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 1362(a)(1) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business

corporation. A termination of an S corporation election under § 1362(d)(2) is effective on or after the date of cessation.

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 the termination, steps were taken so that the corporation is a small business corporation; and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified under § 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 for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall 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 X's S corporation election terminated on Date2 due to the failure by C to properly and timely file a QSST election on behalf of Trust. In addition, we conclude that X's S corporation election would have terminated on Date3, as a result of the transfer of N2 shares of X stock to Trust, if the election had not previously terminated on Date2. We conclude that these terminating events were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation on Date2 and thereafter, unless X's S corporation election otherwise terminated under § 1362(d) for reasons not stated in this letter.

This ruling is contingent upon C filing a QSST election on behalf of Trust, with an effective date of Date2, within 120 days of the date of this letter. A copy of this letter should be attached to the QSST election.

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

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 or implied regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed or implied as to whether Trust qualifies as a QSST.

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 request for a ruling, 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,

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

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

cc: