

**Internal Revenue Service**

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Person To Contact:  
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Telephone Number:

Refer Reply To:  
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Date: March 18, 2009

X =

State =

A =

B =

Trust1 =

Trust2 =

D1 =

D2 =

D3 =

D4 =

D5 =

D6 =

D7 =

Dear

This responds to a letter dated September 2, 2008, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D1. Pursuant to an agreement dated D2, A established Trust1, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. A transferred A's shares of X stock to Trust1. Pursuant to an agreement dated D2, B established Trust2, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. B transferred B's shares of X stock to Trust2.

On D3, A died and Trust1 continued to hold the X stock but ceased to be a grantor trust. Trust1 continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the 2 year period beginning on the day of the deemed owner's death and ending on D5. On D5, Trust1 became an ineligible S corporation shareholder and X's S corporation election terminated under § 1362(d).

On D4, B died and Trust2 continued to hold the X stock but ceased to be a grantor trust. Trust2 continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the 2 year period beginning on the day of the deemed owner's death and ending on D6. On D6, Trust2 became an ineligible S corporation shareholder and X's S corporation election would have terminated under § 1362(d) had the election not already terminated on D5.

On D7, Trust1 and Trust2 distributed all X shares to the individual beneficiaries of the trusts.

X represent that Trust1 and Trust2 qualified to elect to be treated as electing small business trusts (ESBTs) under § 1361(e). X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that X has filed returns consistent with X's status as an S corporation. 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.

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 it was 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 such

ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event 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 such ineffectiveness or 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 D5 because Trust1 was no longer an eligible shareholder of X. We also conclude that this termination of X's S election on D5 was an inadvertent termination within the meaning of § 1362(f). Moreover, had X's S corporation election not already terminated, it would have terminated on D6. Similarly, this termination of X's S election on D6 would have been an inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from D5 to D7, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1 or Trust2 qualify as ESBTs.

This ruling is directed only to the taxpayer who requested 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 with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

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