

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201246002**
Release Date: 11/16/2012

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 1362.04-00, 9100.00-00

, ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-104506-12
Date:
July 10, 2012

X =

A =

B =

State =

D1 =

D2 =

D3 =

Trust =

Dear :

This responds to a letter dated January 30, 2012, and subsequent correspondence submitted on behalf of X and B by their authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code for inadvertent termination of an S corporation election and an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 1361(d)(2).

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D1. Trust, a grantor trust that was treated (under Subpart E of part 1 of subchapter J of chapter 1) as entirely owned by A, was a shareholder of X.

On D2, A died. Trust became irrevocable and ceased to be a grantor trust. Trust continued to qualify as a permissible S corporation shareholder under 1361(c)(2)(A)(ii) for the 2-year period beginning on D2 and ending on D3. B, the beneficiary of Trust inadvertently failed to make the qualified subchapter S trust (QSST) election under 1361(d)(2). Therefore, Trust ceased to be an eligible S corporation shareholder on D3, and X's S corporation election terminated on D3.

X represents that Trust has met the QSST requirements under § 1361(d)(3) at all times since D2 except that B failed to make the election under 1361(d)(2). X also represents that X and its shareholders have filed income tax returns consistent with the treatment of X as an S corporation and Trust as a QSST described in 1361(d).

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. 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 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 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust may be a shareholder if all of it is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States.

Section 1361(c)(2)(A)(ii) provides that a trust which was described in 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(c)(2)(B)(i) provides that for purposes of § 1361(b)(1), in the case of a trust described in § 1361(c)(2)(A)(i), the deemed owner shall be treated as the shareholder.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the QSST election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1361(d)(3) provides that the term "qualified subchapter S trust" means a trust- (A) the terms of which require that- (i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

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 were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, 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, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election. Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that (1) the taxpayer acted reasonably and in good faith, and (2) granting relief will not prejudice the interests of the government.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D3, under § 1362(d)(2), because of the ownership of X stock by Trust which ceased to be an eligible S corporation shareholder at the end of the two-year period described in 1361(c)(2)(A)(iii). We also conclude that this termination of X's S election was an inadvertent termination 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 D3 and thereafter, provided X's S corporation election was valid and was not otherwise terminated under § 1362(d).

We also conclude that the requirements of 301.9100-3 have been satisfied. Accordingly, B is granted an extension of time of 120 days from the date of this ruling to file a QSST election for the Trust.

This ruling is contingent upon B filing a QSST election for Trust, respectively, with an effective date of D2, with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to the QSST election. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

All of X's shareholders in determining their respective income tax liabilities must include pro rata their share of separately stated items of income (including tax-exempt income), loss, deduction, or credit, and nonseparately stated items of income or loss of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368.

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, including whether X was a small business corporation under § 1361(b), or whether Trust is a QSST within the meaning of § 1361(d)(3).

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,

Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
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

cc: