

Internal Revenue Service

Number: **201338016**
Release Date: 9/20/2013
Index Numbers:1362.04-00

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-109591-13

Date:
May 02, 2013

LEGEND

X =

Y =

Trust =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated February 20, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representatives, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated under the laws of State and elected to be an S corporation effective on Date 1.

Y, one of X's shareholders, died on Date 2. On Date 3, following the administration of Y's estate, Y's estate distributed its shares in X to Trust. During the two years between Date 3 and Date 4, Trust was an eligible shareholder by reason of § 1361(c)(2)(A)(iii).

X represents that Trust was a qualified subchapter S trust ("QSST") eligible to make an election under § 1361(d)(2), effective Date 4. However, no such election was filed on behalf of Trust. Therefore, Trust was not a permissible shareholder, and X's S corporation election terminated on Date 4.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that from Date 4, X and its shareholders have filed all returns consistent with X's status as an S corporation. 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.

LAW AND ANALYSIS

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, (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 such termination, steps were taken (A) so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation or a QSub, as the case may be during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that the termination of X's S corporation election on Date 4 was inadvertent within the meaning of § 1362(f). We further conclude that, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 4 and thereafter, provided that, within 120 days of the date of this letter, Trust files a QSST election effective Date 4, pursuant to the provisions set forth in § 1.1362-1(j)(6) with the appropriate service center. A copy of this letter should be attached to the QSST election.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation or whether Trust is eligible to be treated as a QSST.

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

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.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: