

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-101504-04

Date:

January 10 2005

Legend

X =

Y =

A =

a =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This responds to the letter dated November 24, 2003 and other subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

X made an election to be treated as an S corporation effective D1. Y, a trust, was created by the last will and testament of A dated D2. A died on D3. Upon the completion of the probate process, a shares of X stock were transferred to Y on D4. An election to qualify Y as a Qualified Subchapter S Trust (QSST) was not made, causing the termination of X's S election on D5.

X represents that at all relevant times, X and its shareholders treated X as an S corporation and filed their tax returns accordingly. X and its shareholders 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 the period specified by § 1362(f).

Law and Analysis

Section 1361(a)(1) defines an “S corporation” as a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate and other than a trust described in subsection (c)(2)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust – (A) the terms of which requires that – (i) during the life of 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 the 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) shall be terminated whenever the corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the 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 of inadvertent termination of the S election, agrees to makes 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 termination, the corporation is treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X’s election to be treated as an S corporation terminated on D5. We also conclude that the termination constituted an “inadvertent termination” within the meaning of § 1362(f).

Under the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D5, and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d) and further providing that the beneficiary of Y files a QSST election for Y, effective D5, with the appropriate service center within 60 days of the date of this letter.

Except as specifically provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. In particular, no opinion is expressed as to whether X is an S corporation for federal tax purposes or whether Y is a QSST under § 1361(d).

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.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

/s/ Dianna K. Miosi

Dianna K. Miosi
Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter,
Copy for § 6110 purposes

cc: