

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Legend

X =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

A =

B =

n =

Dear :

This responds to a letter dated December 21, 2011, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed in State on Date 1, and made an election to be treated as an S corporation effective Date 2. A transferred shares of X to Trust 1 and Trust 2 on Date 3. A transferred shares of X to Trust 3 on Date 4. A transferred shares of X to Trust 4 on Date 5. However, B, who was the trustee of Trust 1 and Trust 2 on Date 3, failed to make a timely and effective electing small business trust (ESBT) election with respect to Trust 1 and Trust 2. A also failed to make a timely and effective ESBT election with respect to Trust 3 and Trust 4. Therefore, X's S corporation election terminated on Date 3.

X represents that X and each of its shareholders have filed consistently with the treatment of X as an S corporation since Date 3. X further represents that the failure to properly file the ESBT election for Trust was not motivated by tax avoidance or retroactive tax planning. 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.

Section 1361(a)(1) of the Code 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 the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which 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(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a PCB, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust. Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1362(d)(2) provides that (A) in general, 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 and (B) any termination under § 1362(d)(2) 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 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 the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will 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 election as an S corporation terminated on Date 3 and that this termination was inadvertent within the meaning of § 1362(f). We further conclude that, pursuant to the provisions of § 1362(f), X will be treated as being an S corporation from Date 3 and thereafter, provided that X is otherwise eligible to be an S corporation and provided that the election was not otherwise terminated under § 1362(d). Trust 1 and Trust 2 will be treated as ESBTs from Date 3 and thereafter. Trust 3 will be treated as an ESBT from Date 4 and thereafter. Trust 4 will be treated as an ESBT from Date 5 and thereafter.

This ruling is conditioned upon the shareholders of X including in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, making any adjustments to basis as provided in § 1367, and taking into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this letter ruling shall be null and void.

This ruling is further conditioned upon B filing, with the appropriate service center, ESBT elections effective Date 3 for Trust 1 and Trust 2, Date 4 for Trust 3, and

Date 5 for Trust 4. The ESBT elections must be filed within 120 days following the date of this letter and a copy of this letter should be attached to the election.

As an adjustment under § 1362(f)(4), a payment of \$n and a copy of this letter must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41001, Stop 31, Terri Lackey, Manual Deposit. This payment must be sent no later than Date 6.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation or the validity of its S corporation election. We express no opinion on whether Trust 1, Trust 2, Trust 3, or Trust 4 qualify as ESBTs within the meaning of § 1361(e).

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

Melissa Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: