

## Number: 200939014

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June 24, 2009

Dear

The information submitted states that X was incorporated under the laws of State and elected to be an S corporation effective D1. Pursuant to an agreement dated D2, A established Family Trust. A transferred all of the X stock to Family Trust.

X represents that Family Trust qualified to elect to be treated as an electing small business trust (ESBT) under § 1361(e), however, no election was made under § 1361(e)(3) to treat Family Trust as an ESBT. X represents that the failure to make an election pursuant to § 1361(e) was 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 Trustee, 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 D2 because Family Trust was not an eligible shareholder of X on D2. We also conclude that this termination of X's S election on D2 was an inadvertent termination within the meaning of § 1362(f). This ruling is conditioned upon Trustee filing an ESBT election for Family Trust effective D2 with the appropriate Service Center within 60 days of the date of this letter, as well as any necessary original or amended income tax returns of Family Trust necessary to comply with this letter. Copies of this letter should be attached to the ESBT election and any such returns. If Family Trust does not comply with these conditions, this letter is null and void.

Therefore, we conclude that X will continue to be treated as an S corporation for the period beginning on D2, 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 Family Trust qualifies as an ESBT.

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

cc: