

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Legend

X =

Trust =

State =

D1 =

D2 =

Dear :

This responds to a letter dated October 16, 2008, submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief pursuant to § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1. X represents that it timely filed an S corporation election which was effective on D1.

On D2, Trust's assets included shares of X stock. X represents that Trust was eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) effective D2. However, no election to be to an ESBT was filed on behalf of Trust. Therefore, the Trust was not a permissible shareholder, and X's S corporation election was terminated effective D2.

X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. 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 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 paragraph (2) or (3) of § 1362(d); (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, 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.

Based on the information submitted and the representations made, we conclude that X's S corporation election was inadvertently terminated on D2 because X had an ineligible shareholder. Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from D1 and thereafter, provided that the trustee of Trust files an ESBT election effective D2, pursuant to the procedures set forth in § 1.1361-1(m)(2), with the appropriate service center within 60 days of the date of this letter, and provided that X's election to be an S corporation was not otherwise ineffective and was not terminated under § 1362(d). A copy of this letter should be attached to the ESBT election.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust's eligibility to be 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 forwarded to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for section 6110 purposes