

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

CC:PSI:B03

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Date:

June 24, 2014

### LEGEND

X =

Trust1 =

Trust2 =

A =

B =

C =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Year =

n =

Dear :

This responds to a letter dated December 20, 2013, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that the predecessor entity of X was incorporated under the laws of State on Date1. On Date3, X elected to be an S corporation effective Date2. On the effective date of X's S election, the shareholders of X consisted of individuals, grantor trusts, and Trust1. X represents that Trust1 met all of the requirements under § 1.1361-1(m)(1) to be treated as an electing small business trust ("ESBT") and that the trustees of Trust1 timely made the election under § 1361(c)(2)(A)(v) to treat Trust1 as an ESBT effective on Date2.

Specifically, Trust1 was established as an irrevocable trust under the laws of State by A, as settlor, for the benefit of A's son, B. B was the sole beneficiary of income and principal under the trust instrument for Trust1, and no other current or contingent beneficiaries were provided for under the trust instrument. In addition, no interest in Trust1 was acquired by purchase. On Date4, A established Trust2, an irrevocable trust under the laws of State for the benefit of B. X represents that Trust2 met all of the requirements under § 1.1361-1(m)(1) to be treated as an ESBT. B was the sole beneficiary of income and principal under the trust instrument for Trust2, and no other current or contingent beneficiaries were provided for under the trust instrument. In addition, no interest in Trust2 was acquired by purchase. X represents that, pursuant to authority provided under the trust instrument for Trust1, the shares in X held by Trust1 were transferred to Trust2 effective Date5. X further represents that each of the then shareholders of X also expressly consented to this transfer.

X represents that Trust2 was established because Trust1 did not provide authority for the original trustees to designate successor trustees. Instead, pursuant to the trust instrument for Trust1, when both of the original trustees were no longer able to serve as trustees, the successor trustee would be C or C's legal successor. Because Trust1 was an irrevocable trust and its terms could not readily be amended, A established Trust2 as a new trust with the same original trustees, but with a new

provision in the trust instrument for Trust2 authorizing the trustees to designate their successors as trustees.

However, when the trustees transferred the X stock from Trust1 to Trust2 effective on Date5, the trustees failed to timely make the election under § 1361(c)(2)(A)(v) to treat Trust2 as an ESBT effective on Date5. X represents that X was unaware of the failure of the trustees to make this ESBT election on behalf of Trust2.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation since Date2, except for the fact that Trust2 had not filed its fiduciary income tax returns consistent with it being an ESBT. For the tax year beginning on Date5, Trust2's fiduciary income tax return incorrectly indicated that Trust2 was a "Complex Trust" rather than an ESBT. In addition, the items reported on Trust2's fiduciary income tax return were reflected on that return consistent with the treatment of Trust2 as a Complex Trust rather than as an ESBT. The same error was repeated in subsequent tax years for Trust2 until Year. X represents that once this mistake was discovered in Year, Trust2's fiduciary income tax return has been prepared and filed consistent with Trust2's treatment as an ESBT.

X further 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. 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 a 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 the termination of X's S corporation election on Date5 was inadvertent within the

meaning of § 1362(f). We further hold that, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date5 and thereafter, provided that X's S corporation election was valid and provided that the election was not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

Pursuant to the provisions of § 1362(f), X will be treated as an S corporation beginning on Date2, and continuing to be an S corporation on Date5 and thereafter, unless X's S corporation election otherwise terminated under § 1362(d) for reasons not stated in this letter, provided that the following conditions are met.

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 45 days from the date of this letter.

This ruling is contingent upon the trustees of Trust2 filing an ESBT election for Trust2, with an effective date of Date5. The election must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to the election.

If the above conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S election has terminated to the service center with which X's S election was filed.

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 Trust1 and Trust2 qualify as ESBTs, or on the income or transfer tax consequences of the transfer of X stock from Trust1 to Trust2.

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.

The rulings contained in this letter are 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 request for rulings, it is subject to verification on examination.

In accordance with the 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 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

cc: