Internal Revenue Service

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Department of the Treasury

200010051

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:P&SI:1 PLR-110565-99

Date: DEC 8 1999

Legend

X =

A =

B =

C =

D =

E =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

307

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

This responds to your letter of May 28, 1999, submitted on behalf of X requesting relief under §1362(f) of the Internal Revenue Code.

FACTS

X was incorporated on Date 1 by its sole shareholder, A, and made a timely election to be treated as an S corporation effective Date 2. On Date 3, A created Trust1, Trust2, Trust3, and Trust4 (the Trusts) for the benefit of B, C, D, and E, respectively, and transferred shares of X to each trust. The Trusts were intended to be Qualified Subchapter S Trusts (QSSTs) but no election was timely filed. On Date 4 and Date 5, X redeemed the complete interests of the Trusts at fair market value. In addition, it is represented that X may have terminated due to certain other circumstances. All of the shareholders of X have consented to any adjustments (consistent with the treatment of X as an S corporation) as may be required.

LAW AND ANALYSIS

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under section 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.

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Section 1362(a)(2) provides that an election to be treated as an S corporation shall be valid only if all persons who are shareholders in such corporation on the day which such election is made consent to such election.

Section 1362(d)(2 ) provides that an election to be an S corporation shall be terminated whenever such corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made by reason of a failure to meet the requirements of section 1361(b) or was terminated under section 1362(d)(2), (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 circumstances resulting in such ineffectiveness, 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 ineffectiveness of the S election, 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, the corporation is treated as an S corporation during the period specified by the Secretary.

## CONCLUSION

Based solely on the representations made, we conclude that X 's S election terminated as of Date 3. We also conclude that the circumstances resulting in the termination of X's S election were inadvertent. In addition, we conclude that the other circumstances represented by the taxpayer that may have subsequently terminated X's election were inadvertent. Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election is not otherwise terminated.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described under any other provision of the Code. In particular, no opinion is expressed as to whether X made an otherwise valid subchapter S election under section 1362 or whether X's S election was otherwise terminated.

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.

Sincerely yours,

DAVID R. HAGLUND
Senior Technician Reviewer, Branch 1
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosures: 2
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