March–April 2011

S Corporation Corner

By Robert C. Walthall

Losing Your S Election–Winning the Game

The country music group, Rascal Flatts, has a popular song titled "Winner at a Losing Game." The following words from that song seem to describe the challenges that S corporations, their shareholders and advisors face when attempting to prevent or correct an S corporation termination: "and I think that it's time to tell this uphill fight goodbye … [it] Is like trying to catch the rain … I'm a winner at a losing game." As discussed below, any advisor who has worked with preventing or curing a terminated S election can relate to those words! The S termination game can be won with prompt action to correct the termination mistakes and with IRS approval.

Introduction

In a number of recent rulings, the IRS has granted favorable relief on inadvertent S corporation elections and terminations.[1] These rulings have involved transfer of S corporation shares to various types of ineligible shareholders, including trusts, partnerships and IRAs and other shareholder action that intentionally or unintentionally terminated the S election. These rulings, along with this author's recent experiences in working with S corporations facing potential election termination, illustrate the need for both S corporation shareholders and their advisors to be proactive in preserving the S election. They must be attentive to some recurring S corporation termination issues, including eligible and ineligible shareholders, potential problems in dealing with minority shareholders (including those who are dissident, in bankruptcy or otherwise), and the importance of having a comprehensive S corporation shareholder agreement in

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place. This author's recent experiences in this area include dealings with (a) a bankrupt and dissident minority shareholder (and his creditors) unilaterally seeking to cause the termination of the S election by the transfer of his shares to an ineligible shareholder in violation of a shareholder agreement restricting such transfer; (b) an S corporation shareholder's inadvertent transfer of shares to a trust not qualified to be a shareholder; (c) a shareholder's transfer of his stock to an IRA; and (d) an estate's prolonged delay in transferring S corporation stock to a marital trust.

Additionally, a recent article in this Journal discussed a new private letter ruling in which the taxpayer obtained fully retroactive S corporation inadvertent termination relief under Code Sec. 1362(f).[2] As the author of that article noted, the IRS used the authority of Code Sec. 1362(f)(4) to collect amounts from the taxpayer with respect to periods that otherwise would be beyond the government's reach due to the expiration of the statute of limitations on assessment of taxes. This article should be read in conjunction with the earlier article when having to deal with an inadvertent election termination issue.

> A termination may be accomplished only by (i) revocation, (ii) generating passive investment income under certain circumstances or (iii) ceasing to be a small business corporation.

Ceasing to be an S Corporation– Terminating the S Election

A valid S election is effective for the year made and all subsequent years until it is terminated.[3] A termination may be accomplished only by (i) revocation, (ii) generating passive investment income under certain circumstances or (iii) ceasing to be a small business corporation. The Internal Revenue Code ("the Code") provides only these three ways by which the S corporation election may be terminated.

Termination of S Election by a Dissident Minority Shareholder

A shareholder (be it one that is dissident, minority or otherwise) can unilaterally attempt to cause a termination of S status for the corporation by attempting to transfer one or more shares to an ineligible shareholder. Both the courts and the IRS have addressed whether a shareholder's attempt to terminate an S election by the transfer of shares to an ineligible shareholder or otherwise would be recognized.

In LTR 9409023,[4] the IRS held that where a transfer of stock from an S corporation would have terminated the S election under Code Sec. 1362(d)(2), but a court subsequently determined that the stock transfer was void *ab initio*, the S election did not terminate. In LTR 201026006,[5] the founding shareholders of an S corporation executed a shareholders' agreement providing that a shareholder desiring to transfer shares must (i) obtain the prior consent of other shareholders, (ii) the proposed transferee must become a party to the agreement, and (iii) no transfer is allowed that would trigger termination of the S election. A shareholder attempted to transfer a portion of his shares to an ineligible shareholder. A court later held that the attempted transfer was null and void and that the original shareholder remained the record and legal owner of the shares. The IRS ruled that since the transfer was void *ab initio* under state law, the ineligible shareholder was never a shareholder and the corporation's S election did not terminate on the date of the attempted transfer.

The courts have on numerous occasions held that a nominal transfer of S corporation stock to a new owner, when the new owner did not assume full economic control and ownership of the stock, would be disregarded for termination purposes. These cases arose in an era when a new shareholder consent to S status was required. It was not unusual in that era for a shareholder seeking to terminate the election to attempt a termination of S status by transferring one share to a party who declined to consent to the S status.

The courts use an objective facts test to ascertain whether such transfer was bona fide and had economic reality and examine such matters as the consideration paid for the transfer of shares, the degree of control exercised by the new owner and the like. In *C.L. Hook*,[6] the court held that the transfer of the S corporation stock to the shareholder's attorney was not bona fide and lacked economic reality. Accordingly, the attorney's failure to consent to the corporation's election did not terminate its S status under prior law. Similarly, in *F.G. Auld*,[7] the court held that the sole shareholder's planned transfer of

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a portion of his stock to his son did not take place, since the son did not receive any distributions from the corporation and, therefore, the transfer lacked economic reality. Accordingly, the son's failure to consent to the corporation's S election did not terminate its status under prior law.

Conversely, where the stock of an S corporation is transferred to an ineligible shareholder in a bona fide transfer, the courts have supported the termination of the S status.[8] In *T.J. Henry*, the shareholder transferred stock to himself as custodian for his children under the Uniform Gift to Minors Act and did not file a consent to S status. The court held the transaction was bona fide and evidenced economic substance. However, in *A.W. Chesterton Co.*, the court found that the S corporation shareholders have a fiduciary duty under state law not to act in a way that would cause the S corporation to lose the considerable benefits of S status, and enjoined a shareholder from transferring a portion of its stock to an ineligible shareholder.[9]

Using a Shareholder Agreement to Prevent Stock Transfer to an Ineligible Shareholder

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A shareholder agreement can be an effective device to prevent any stock transfer by any shareholder to an ineligible shareholder. This agreement should include appropriate provisions designed to maintain S corporation status, including the shareholders' acknowledgment and agreement: (i) to continue such election unless they terminate it in accordance with the agreement; (ii) to do nothing that will cause an inadvertent or wrongful termination of the S election; (iii) that any shareholder who violates the agreement and as a result causes a termination of the S election shall indemnify, defend and hold harmless the other shareholders with respect to any damages they may suffer as a result of the termination; (iv) to enter into an agreement under Code Sec. 1362(f)(4) to make any adjustments required by the IRS to cure an inadvertent termination of the corporation's S election; and (v) to first offer the stock to the corporation and other shareholders before any transfer can be made to outside parties (the buy-sell arrangement). The corporation also should include on the stock certificates a designation that the shares are subject to a shareholder agreement and may not be transferred other than under the terms of this restrictive agreement.

There are two other matters that must be addressed when including buy-sell provisions in a shareholder agreement for an S corporation. The agreement should comply with the estate-freeze provisions of the Code and must comply with the one-class-of-stock rules.

Code Sec. 2703(a) provides that the value of property, including stock, is determined without regard to (1) an option, agreement, or other right to acquire the property for less than fair market value ("FMV") or (2) any restriction on the right to sell or use the property. An exception to this rule applies to any agreement, right, or restriction that (i) is a bona fide business arrangement; (ii) is not a device to transfer property to a transferor's family member for less than full and adequate consideration; and (iii) includes terms that are comparable to "similar arrangements entered into by persons in an arm's length transaction."[10] Including in the agreement a statement that the purpose of the agreement is to protect the corporation's S election should provide support that it was entered into for a bona fide business purpose.

The third requirement listed above that the agreement is comparable to what could have been obtained in a fair bargain among unrelated parties in the same type of business, involves consideration of the expected term of the agreement, the stock's current market value, anticipated changes in the stock's value during the term of the agreement, and any consideration given in return for the rights granted by the agreement. A right or restriction is considered to be a fair bargain among unrelated parties in the same type of business if it conforms with general business practice.[11] Accordingly, the buy-sell restrictions in the agreement should be considered to be comparable to what could have been obtained in an arm's-length transaction.

The shareholder agreement also must comply with the one-class-of stock rules. The regulations state that a shareholder buy-sell agreement, in general, will not create a second class of stock unless a principal purpose of the agreement is to circumvent the one-class-of-stock requirement and the agreement establishes a purchase price (at the time the agreement is entered into) that is significantly in excess of or below the stock's FMV. A safe harbor is provided for agreements that establish a purchase price between the stock's book value and its FMV. The IRS must respect a good-faith determination of FMV unless the value is substantially in error and was not determined with reasonable diligence.[12] The regulations also include a safe harbor for the determination of a stock's book value. A determination of book value will be

respected if computed in accordance with GAAP or if used for any substantial nontax purpose.[13]

Inadvertent Terminations of S Corporations

If certain conditions are met, a corporation may continue as an S corporation despite the occurrence of a terminating event. Code Sec. 1362(f) provides that a corporation will continue as an S corporation "during the period specified by the Secretary" if:

- The election was not terminated by revocation;
- The Secretary determines that the termination was inadvertent;
- No later than a "reasonable period of time" after discovery of the terminating event, steps were taken to requalify the corporation as a small business corporation; and
- The corporation and each shareholder during the non-S-status period agree to make the adjustments specified by the Secretary.[14]

In the recent inadvertent termination rulings, the IRS has been requested to grant inadvertent election and termination relief involving various types of trusts [*inter vivos* trust, testamentary trust, qualified subchapter S trusts ("QSSTs") and electing small business trusts ("ESBTs")]. It is clear from the rulings granted and discussed here that the IRS has been fairly lenient in granting inadvertent election and termination relief for a wide range of situations involving various types of trusts, partnerships and IRAs (*i.e.*, ineligible shareholder situations). Congress had requested that the IRS be lenient in granting inadvertent election and termination relief and the IRS has complied with congressional intent.

Trusts as S Corporation Shareholder

In LTR 200952015,[15] *X* elected to be an S corporation, and thereafter two of its four shareholders transferred shares to a trust that was not a qualified shareholder, thereby terminating *X*'s S election. *X* represented to the IRS that there was no intent to terminate *X*'s S corporation election and the IRS concluded that the termination of the S corporation election was inadvertent under Code Sec. 1362(f), and *X* would be treated as continuing to be an S corporation. The shareholders who transferred the shares to the trust would be treated as the shareholders of the corporation.

In LTR 201020007,[16] an S corporation shareholder sold shares to Trust1 and Trust2, both of which were wholly owned grantor trusts and permissible S corporation shareholders. Subsequently, the shares held by the trusts were transferred to a large group of trusts, each of which qualified as a QSST. However, the beneficiary of each trust failed to make the election under Code Sec. 1361(d) and accordingly, the company's S election technically terminated. Upon discovery of the omission, the company sought relief on claims that the termination was inadvertent and that it was not motivated by either tax avoidance or retroactive tax planning. The IRS granted that relief, provided that proper QSST elections for each trust were filed within 60 days.

Testamentary Trusts

In two recent rulings involving testamentary trusts, the IRS granted inadvertent termination relief. In LTR 201001010 and LTR 201001012,[17] pursuant to the terms of the shareholder's will, the stock was transferred to a testamentary trust. Under the terms of the trust, the sole beneficiary was the shareholder's spouse. The trust satisfied the requirements to be treated as a QSST, but the beneficiary failed to make the QSST election. The IRS ruled that the termination was inadvertent, contingent upon the spouse's filing a QSST election.

In a similar situation, LTR 200942019,[18] individuals *A* and *B* transferred shares of an S corporation into Trust1, which provided that some of those shares were to be held in a separate trust (Trust2) for *B*'s benefit. Trust2 was treated as if owned by *B* under Code Sec. 1361(c)(2)(A)(i). At *B*'s death, the shares were to be held by Trust3, which was intended to qualify as a QSST. *A* was Trust3's sole beneficiary but failed to file a timely QSST election for Trust3, and the S election was terminated upon discovery of the omission and termination after *A*'s death. The IRS granted relief that the termination was inadvertent.

In LTR 201011005,[19] S corporation shareholder *A* established revocable trust1 to which he transferred the S corporation stock. Revocable trust1 ceased to be a grantor trust on the grantor's death, but it continued to qualify as an S corporation shareholder beginning on the day of the grantor's death and ending when the stock held by Trust1 was transferred to Trust2. Trust2's trustees failed to make an ESBT election for Trust2, thereby terminating the S election for Trust2. The IRS granted relief based on the taxpayer's representation that Trust2 was qualified to be treated as an ESBT and that the circumstances resulting in termination were inadvertent within the meaning of Code Sec. 1362(f).

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QSSTs and ESBTs–S Election Requirements and Terminations

A separate election must be made to treat a trust as a QSST or as an ESBT. Under Code Sec. 1361(d)(2), an election to treat the trust as a QSST and to treat the income beneficiary as the owner of the trust's S corporation stock must be made by the income beneficiary (not the trustee) within two months and 15 days after the trust's receipt of the S corporation stock. Under Code Sec. 1361(e)(3), an election to treat a trust as an ESBT must be made by the trustee of the trust (rather than the beneficiary of the trust in the QSST context), and the trustee must make the election within the same time constraints imposed on QSST elections for the ESBT election to be timely.

There have been numerous instances[20] in which the required QSST election was filed incorrectly, was not timely filed, or the wrong party signed the election. In each case, the IRS determined that there was good cause for the failure to make the election and granted a 60-day extension from the ruling date to make the election. Each ruling was contingent upon the corporation and all of its shareholders treating the corporation as having been an S corporation continually from the time the trust received the stock. Accordingly, all shareholders had to include in their income their pro rata share of the corporation's income under Code Sec. 1366, make any needed adjustments to basis under Code Sec. 1367, and take into account any distributions made by the S corporation under Code Sec. 1368.

In LTR 200952037,[21] the company made an S election when shares of its stock were held in a trust. The trust made an election to be treated as a QSST but did not satisfy the QSST requirements. The S corporation represented that the trust qualified to be treated as an ESBT, but no ESBT election was ever made. As such, the trust was an ineligible shareholder, and the company's S election was never valid. The IRS concluded that the company's S election was not effective because the trust was an ineligible shareholder, but indicated that the circumstances resulting in such ineffectiveness were inadvertent and that the entire corporation was to be treated as an S corporation, assuming the correct election was made.

In LTR 201016016,[22] S stock was transferred to a trust, which at such time was an eligible S corporation shareholder. After the transfer, the trust ceased to be a qualified trust for purposes of Code Sec. 1361. Thus, the company's S election terminated. When the company discovered the termination, it commenced to treat the trust as a QSST, and the income beneficiary of the trust reported his share of income consistent with the trust's treatment as a QSST. But the trust was not a QSST because the beneficiary failed to file a QSST election and because the trust could distributee income and corpus to the beneficiary's dependents. Because the beneficiary had no dependents, he obtained a trust modification so that during his life he was the trust's only income and corpus distribute. Given these facts, the IRS ruled that the termination was inadvertent, but conditioned the ruling on the timely filing of a QSST election.

> Congress had requested that the IRS be lenient in granting inadvertent election and termination relief and the IRS has complied with congressional intent.

In LTR 201002007,[23] a corporation made an S election when each of two grantor trusts (trust *A* and a spousal trust) owned 50 percent of its stock. When *A*'s grantor died, trust *B* was established and the stock held in *A* was transferred to it. The decedent's spouse was *B*'s income beneficiary. *B* met all the criteria for QSST status, but the spouse failed to elect such status. *B* was not an eligible S corporation shareholder, and its ownership of S stock terminated the S election. The IRS held that the S election terminated as a result of the spouse's failure to timely make the required election, but that the termination was inadvertent.

In LTR 200949032,[24] all the shares of an S corporation were transferred to trust *A*, a wholly owned grantor trust qualified to hold shares of an S corporation. *A*'s assets, including all the S stock, were later transferred to trust *B*. *B* was eligible to be a QSST, but no QSST election was ever filed for *B*. *B* did not otherwise qualify as an eligible shareholder of an S corporation. Thus, the company's S election terminated as of the transfer. The IRS concluded that the company's S election was terminated when stock in the company was transferred to *B* but that the termination was inadvertent.

In another situation, LTR 200945023,[25] an S corporation shareholder transferred stock to three trusts that did not qualify as QSSTs. The S corporation

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represented that the assets of the three trusts, including their shares in the S corporation, would be transferred to three other trusts upon the grant of relief under Code Sec. 1362(f). Under the terms of the trust instruments, the new trusts qualified as QSSTs, and QSST elections for these trusts, which already held S corporation stock, were timely made. The IRS ruled that the termination was inadvertent.

In LTR 201010007,[26] a trust that was an invalid S corporation shareholder became a shareholder of an S corporation, and no election was made to treat the trust as an ESBT. As a result, the S corporation election was invalid. The trust sold its shares in the S corporation to a wholly owned grantor trust that was a valid S corporation shareholder. The S corporation represented that the circumstances resulting in its invalid S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. It further represented that it filed returns consistent with its status as an S corporation. The IRS concluded that the S corporation election was not effective because the trust was not an eligible shareholder. It also concluded that the ineffective S election was inadvertent and that it would treat the entity as an S corporation, provided that the election was otherwise valid.

In LTR 201002003,[27] shares of an S corporation were transferred to trust *A*, a revocable trust treated as a wholly owned grantor trust. Trusts *B, C, D*, and *E* were later created and each received S stock from trust *A*. However, trusts *B, C, D*, and *E* failed to elect ESBT status, thus terminating the company's S election. Thereafter, *A*'s grantor died, terminating *A*'s grantor trust status. Had the company's S status not already been terminated when *B, C, D*, and *E* failed to file ESBT elections, *A*'s failure to file an ESBT election within two years of its grantor's death would have resulted in termination. Upon discovery of the terminations, the company sought relief that the termination was inadvertent. The IRS agreed and ruled that the company would continue to be treated as an S corporation, provided that all five trusts filed valid ESBT elections reflecting the appropriate effective dates. In LTR 201015001,[28] the IRS reached a similar conclusion in a situation with similar facts.

Partnerships

There have been several recent instances in which S corporation stock was transferred to a partnership, thereby terminating the S election. In LTR 201016025,[29] a corporation made an S election thereafter the corporation transferred S stock to an LLC, which was owned by *A, B, C, D,* and *E* and treated as a partnership for federal tax purposes. Upon discovery of the ineligibility, the LLC distributed to *B, C, D,* and *E* their pro rata shares of the S stock in redemption of their interests in the LLC. The LLC, which as a result of the redemption, then became a disregarded entity owned solely by *A*, a qualified shareholder, continued to hold *A*'s shares. The IRS ruled that the termination was inadvertent, and that it would treat the corporation as an S corporation notwithstanding the temporary existence of the ineligible shareholder.

In LTRs 201014035 and 200953016,[30] an S corporation's election was inadvertently terminated when the S stock was transferred to a partnership. The owners of the partnership entered into an agreement to transfer the stock ownership to one owner, which resulted in the partnership's federal tax classification changing from a partnership to an entity disregarded from its owner. The IRS ruled that the termination of the S election was inadvertent, and the corporation continued to be treated as an S corporation.

IRAs

Both traditional IRAs and Roth IRAs are ineligible S corporation shareholders. In the 2010 case of *Taproot Administrative Services*,[31] the Tax Court determined that a Roth IRA was not an eligible S corporation shareholder, so the corporation's S election had terminated. In this case, the sole shareholder was a custodial Roth IRA account. The Tax Court cited Rev. Rul. 92-73,[32] which holds that a traditional IRA is not a grantor trust eligible to be considered an S corporation shareholder, because, unlike a grantor trust, its income is not currently taxed to the beneficiary. The Court said the same is true of Roth IRAs.

Shareholder Eligibility

In LTR 201028024,[33] a corporation made an S election and thereafter an ineligible shareholder became a shareholder. Upon discovery of the termination, steps were taken so that the corporation could qualify as an S corporation. The IRS concluded that the S election terminated when the ineligible entity became a shareholder, but that this termination constituted an inadvertent termination.

In a similar situation, LTR 201027014,[34] S corporation stock was transferred to a corporation owned by an individual based upon the representation that the corporation was an eligible S corporation shareholder. Upon discovery of the termination of the S election, the S corporation sought a ruling

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that the termination was inadvertent and that it had continued to be an S corporation. The IRS held that the transfer to the ineligible shareholder had caused an inadvertent termination and that the corporation would be entitled to continue to be treated as an S corporation, if the ineligible corporation transferred its stock to its individual owner within ninety days of the ruling and the S corporation filed amended returns as necessary to treat the individual as owner of the S stock (including for the period that the corporation held the stock).

Similarly, in LTR 201017009,[35] on date 1 the corporation elected to be treated as an S corporation; thereafter, on date 2, a shareholder became an ineligible shareholder of the corporation and on date 3 such shareholder ceased to be an ineligible shareholder of the corporation. The company requested that the IRS rule that the termination of its S election was inadvertent and that it had continued to be an S corporation. The company represented that the circumstances resulting in the termination of the company's S status were inadvertent and were not motivated by tax avoidance. The IRS held that the company's S status, in fact, would have been terminated by the presence of an ineligible shareholder but that the termination was inadvertent.

Likewise, in LTR 201017036,[36] the corporation made an election to be treated as an S corporation on day 1. On day 2, an ineligible shareholder became a shareholder of the corporation. The IRS concluded that the S election was terminated because such person *A* was an ineligible shareholder, but that the termination constituted an inadvertent termination and the corporation would be treated as an S corporation, provided that its election was otherwise valid and had not otherwise terminated.

In LTR 201027001,[37] an S corporation issued shares to a nonresident alien, an ineligible S corporation shareholder. Upon discovery of the error, the corporation promptly took remedial action and redeemed all the shares it had issued to the nonresident alien. The IRS concluded that the S corporation election terminated when it issued stock to an ineligible shareholder. The IRS ruled that the termination of the S status was inadvertent and that it had continued to be an S corporation. The IRS ruling was conditioned on the eligible shareholders of the S corporation being treated as directly owning a pro rata portion of the shares of the corporation that were held by the nonresident alien, in addition to any other shares of the corporation that they held during that period.

Death or Bankruptcy of an S Corporation Shareholder

Upon the death of an S corporation shareholder, the decedent's stock in the corporation is subject to the possession of the executor or administrator of the shareholder's estate for the purpose of administration, and the estate becomes a shareholder as of the date of the decedent's death.[38] An estate cannot remain in existence indefinitely and, if the estate is unduly prolonged where a trust is the estate beneficiary, the IRS may contend that the estate is considered terminated, no subsequent election has been made by the applicable trust beneficiary and the S corporation election is invalid. In *Old Virginia Brick Co.*,[39] the majority shareholder died in 1941, and by 1946 all of the routine tasks of estate administration had been completed. Thereafter, the executors continued to hold the stock of the decedent. In 1959, the corporation filed an S election, and all shareholders including the executors filed consents. The IRS contended that the corporation did not qualify for S status because one of its stockholders was a trust rather than an estate, because the executors had long since completed their duties as executors. The court held the stock was in fact held by a testamentary trust; relying on Reg. §1.641(b)-3(a), which provides that an estate is considered terminated if the period of administration is unduly prolonged and that the period of administration is the period actually required by the executor or administrator to perform the ordinary duties of administration.

Accordingly, there is no bright line test to determine when the period of estate administration has been unduly prolonged, but the S corporation advisor should be diligent in avoiding this potential trap when S stock is held by an estate.

Under Code Sec. 1361(c)(3), the bankruptcy estate of an individual S corporation shareholder qualifies as an eligible shareholder of the corporation. Accordingly, commencement of a bankruptcy case involving an individual S corporation shareholder will not terminate S corporation status.

Conclusion

The S election termination game is clearly one that can be avoided in most instances (when eligibility, elections and termination issues are properly handled, including use of a comprehensive shareholder agreement); and if the S termination game has to be played, it can be won with prompt remedial action and IRS approval.

Endnotes

1 *See, e.g.*, LTRs 200952015 (Dec. 24, 2009); 201029005 (July 23, 2010); and 201016025 (Dec. 10, 2009).

2 *See* Stuart J. Frentz, S Corporation Corner, *The IRS Will Extend Inadvertent Termination Relief to Closed Years—For a Price*, J. Passthrough Entities, Mar.–Apr. 2010, at 39.

3 Code Sec. 1362(c).

4 LTR 9409023 (Dec. 3, 1993).

5 LTR 201026006 (July 2, 2010).

6 *C.L. Hook*, 58 TC 267, Dec. 31,380 (1972).

7 *F.G. Auld*, 37 TCM 1851-86, Dec. 35,598(M), TC Memo. 1978-508.

8 *T.J. Henry*, 80 TC 886, Dec. 40,110 (1983).

9 *A.W. Chesterton Co.*, CA-1, 97-2 ustc ¶50,809, 128 F3d 1. *See also* Andrew R. Biebl, Gregory B. McKeen, George M. Carefoot and James A. Keller, PPC's Tax Planning Guide—S Corporations (21st ed.).

10 Code Sec. 2703(b); Reg. §25.2703-1(b)(1).

11 Reg. §25.2703-1(b)(4)(ii).

12 Reg. §1.1361-l(2)(iii)(A).

13 Reg. §1.1361-l(2)(iii)(C).

14 *See* Reg. §1.1362-4; Rev. Proc. 2003-43, 2003-1 CB 998; LTR 9301016 (Oct. 9, 1992); LTR 9253016 (Sept. 30, 1992).

15 LTR 200952015 (Dec. 24, 2009).

16 LTR 201020007 (May 21, 2010).

17 LTRs 201001010 (Jan. 8, 2010) and 201001012 (Jan. 8, 2010).

18 LTR 200942019 (Oct. 16 2009).

19 LTR 201011005 (Mar. 19, 2010).

20 *See, e.g.*, LTRs 201029005 (July 23, 2010), 201006017 (Feb. 12, 2010), 20107041 (Apr. 30, 2010), 201003002 (Jan. 22 2010), and 200946008 (Nov. 13, 2009).

21 LTR 200952037 (Dec. 24, 2009).

22 LTR 201016016 (Apr. 23, 2010).

23 LTR 201002007 (Jan. 15, 2010).

24 LTR 200949032 (Dec. 4, 2009).

25 LTR 200945023 (Nov. 6, 2009).

26 LTR 201010007 (Mar. 12, 2010).

27 LTR 201002003 (Jan. 15, 2010).

28 LTR 201015001 (Apr. 16, 2010).

29 LTR 201016025 (Apr. 23, 2010).

30 LTRs 201014035 (Apr. 9 2010) and 200953016 (Jan. 4 2010).

31 *Taproot Admin. Servs.*, 133 TC —, No. 9, Dec. 57,950 (2009).

32 Rev. Rul. 92-73, 1992-2 CB 224.

33 LTR 201028024 (July 16, 2010).

34 LTR 201027014 (July 9, 2010).

35 LTR 201017009 (Apr. 30, 2010).

36 LTR 201017036 (Apr. 30, 2010).

37 LTR 201027001 (July 9, 2010).

38 Rev. Rul. 62-116, 1962-2 CB 207.

39 *Old Virginia Brick, Co.*, CA-4, 66-2 ustc ¶9708, 367 F2d 276, *aff'g*, 44 TC 724, Dec. 27,532 (1965).

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