

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:PSI:B01 – PLR-144108-03

Date:

April 29 2004

X =

Date 1 =

Date 2 =

Date 3 =

Trust 1 =

Trust 2 =

A =

B =

D =

Court =

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Dear _____ :

This responds to your letter dated March 10, 2003 on behalf of X, requesting a ruling that certain trusts are qualified subchapter S trusts under section 1361(d)(3) of the Internal Revenue Code.

FACTS

X was incorporated Date 1. Shares of X are currently held by Trust 1 and Trust 2. If the ruling requested is granted, X intends to elect S corporation status under section 1362(a) effective Date 2.

With the exception of the beneficiary named, the terms of Trust 1 and Trust 2 are identical. A is the beneficiary of Trust 1 and B is the beneficiary of Trust 2. Both trusts were created under the Last Will and Testament of D (Will). Paragraphs (d) and (e) of the Will provide that upon the death of D's wife, the net income from each trust shall be paid directly to the trust beneficiary as long as he lives. Paragraphs (d)(1) and (e)(1) of the Will provide that, after the death of D and D's wife, each beneficiary, during his respective lifetime, shall have the power to appoint up to one-half of the value of the trust corpus of his respective trust, at the time of the death of D's wife to the issue of A or B, in such amounts and proportions and on such trusts and estates as he shall deem fit.

Pursuant to an Order of the Court on Date 3, both A and B have both fully exercised their lifetime powers of appointment, and distributions were made to their children. As a result of the exercises of the powers of appointment, A is the sole income beneficiary of Trust 1 and B is the sole income beneficiary of Trust 2 and no other beneficiaries are entitled to distributions of income or principal until the death of these income beneficiaries.

LAW AND ANALYSIS

Section 1362(a) allows small business corporations to elect to be treated as S corporations.

Section 1361(b) defines a small business corporation as a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate and other than a trust described in section 1361(c)(2)) who is not an individual.

Section 1361(c)(2)(A)(i) allows a trust all of which is treated (under subpart B of part 1 of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States to be an S corporation shareholder.

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Section 1361(d)(1) provides that a qualified subchapter S trust shall be treated as a trust described in section 1361(c)(2)(A)(i) if the beneficiary of the qualified subchapter S trust makes an election under section 1361(d)(2). For purposes of section 678, the beneficiary of a qualified subchapter S trust shall be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which an election under section 1361(d)(2) is made.

Section 1361(d)(3) defines a qualified subchapter S trust as a trust the terms of which require that: (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to that beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of the beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to the income beneficiary. In addition, all of the income of the trust must be distributed (or must be required to be distributed) currently to one individual who is a citizen or resident of the United States. A substantially independent share of a trust within the meaning of section 663(c) shall be treated as a separate trust for purposes of section 1361(d)(3).

CONCLUSION

Based on the facts submitted and the representations made, and provided that each trust distributes all of its income (within the meaning of section 643(b)) currently to its income beneficiary, we conclude that Trust 1, and Trust 2 are qualified subchapter S trusts within the meaning of section 1361(d)(3).

Except as specifically ruled upon above, we express no opinion concerning the federal tax consequences of the facts described under any provision of the Code. Specifically, we express no opinion concerning whether the election of X to be treated as a subchapter S corporation will be a valid election under section 1362.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 the taxpayer.

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.

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Sincerely yours,

/s/ David R Haglund

David R. Haglund
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Enclosures (2)
Copy of this letter
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cc: