

Number: **200637024**
Release Date: 9/15/2006
Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 1361.03-02

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-148633-05

Date:
March 16, 2006

X =

Trust =

A =

B =

Y =

Dear :

This responds to a letter dated September 14, 2005 submitted on behalf of X, by X's authorized representative, requesting a ruling that Trust meets the requirements to be a qualified subchapter S trust under §1361(d)(3) of the Internal Revenue Code.

The information submitted indicates that X intends to elect to be treated as an S corporation and that Trust holds stock in X.

A, now deceased, established Trust for B, who is an adult resident and citizen of the United States.

The trust agreement for Trust provides that the net income of Trust shall be used so far as required or necessary for the proper support and maintenance of B. In the event the net income from Trust does not equal y dollars per year, the trustee is permitted to draw upon the principal of Trust for the purposes of giving B a minimum of y dollars per year and shall have the right to draw upon the principal of Trust, in additional sums, if necessary for emergency purposes. Trust is to continue in full force

and effect during the lifetime of B, and at B's death, Trust is to terminate and the trust estate is to be distributed to B's children.

The trust agreement for Trust does not provide for distributions for anyone other than B during B's lifetime and it has been represented that under state law no one other than B can receive a distribution of income or corpus from Trust during B's lifetime. It has been further represented that Trust distributes all of its net income to B annually.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(d)(1) provides that a qualified subchapter S trust (QSST) whose beneficiary makes an election under § 1362(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of § 678(a)) of that portion of the QSST's S Corporation stock to which the election under § 1361(d)(2) applies.

Section 1361(d)(3) and § 1.1361-1(j)(1)(i) of the Income Tax Regulations provides that for purposes of § 1361(d) the term QSST means a trust (A) 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 such beneficiary; (iii) the income interest of the current 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 that beneficiary; and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

Section 1.1361-1(j)(2)(ii)(A) provides that the determination of whether the terms of a trust meet all the requirements under § 1.1361-1(j)(1)(ii) depends on the terms of the trust instrument and the applicable local law.

Based on the terms governing Trust and the representations made, and provided all the net income of Trust continues to be distributed currently to B, we conclude that Trust meets the requirements of § 1362(d)(3) of the Code.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the facts of this case under any other provision of the Code. Specifically, we express no opinion on whether X is otherwise qualified to be an S corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(j)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. Thomas Hines
Chief, Branch 2
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: 2
Copy of this letter
Copy for § 6110 purposes