

**Internal Revenue Service**

Number: **200722018**

Release Date: 6/1/2007

Index Number: 1361.03-02

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:PSI:B02

PLR-148221-06

Date:

February 15, 2007

X =

Trust =

B =

State =

Court =

Date =

1

Date =

2

Dear :

This responds to a letter dated June 27, 2006, submitted on behalf of Trust by Trust's authorized representative, requesting a ruling that Trust, as reformed, is a qualified subchapter S trust (QSST) under § 1361(d)(3) of the Internal Revenue Code.

The information submitted states that X elected to be an S corporation effective Date 1. Trust, whose trustee made an election for Trust to be an Electing Small Business Trust (ESBT) under § 1361(e)(3) effective Date 1, was a shareholder of X. The trustee of Trust and B, the beneficiary of Trust, propose to convert Trust, an ESBT, into a qualified

subchapter S trust (QSST) under § 1361(d). In order for Trust to make this conversion, the trustee of Trust petitioned the court in State to reform Trust to comply with § 1361(d)(3).

On Date 2, the Court issued an order to reform Trust. As reformed, Trust requires that all Trust income is payable at least quarterly to B during his lifetime and permits the trustee to pay to or for the benefit of B such sums from the principal of Trust as the trustee deems necessary or advisable from time to time for B's health, support, maintenance, and education, considering the income of B from all sources know to the trustee.

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that the term small business corporation is a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate and other than a trust described in § 1361(c)(2) or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(i) provides that a trust all of which is treated (under subpart E of part 1 of subchapter J of chapter 1) as owned by an individual who is a resident of the United States is an eligible shareholder.

Section 1361(d)(1) provides that in the case of a QSST for which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of the 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 the election under § 1361(d)(2) is made. Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d)(1) apply.

Section 1361(d)(3)(A) provides that a QSST is 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 such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such 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 such beneficiary. In addition, § 1361(d)(3)(B) requires that the trust distribute all its income (within the meaning of § 643(b)) currently to one individual who is a citizen or resident of the United States.

Rev. Rul. 93-79, 1993-2 C.B. 269, provides that a state court order that reforms a trust to meet the requirements of a QSST is recognized prospectively.

Based solely on the information submitted and the representation made, we conclude that Trust, as reformed, meets the definition of a QSST under § 1361(d)(3). Therefore, provided that the beneficiary makes a proper election under § 1361(d)(2), Trust will be treated as a trust described in § 1361(c)(2)(A)(i).

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 on whether X is a subchapter S corporation for federal tax purposes.

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

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

Sincerely,

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

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes