

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201114002**
Release Date: 4/8/2011

Third Party Communication: None
Date of Communication: Not Applicable

Index Numbers: 1361.03-03, 9100.00-00,
9100.22-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-125705-10

Date:
December 15, 2010

LEGEND

Trust =

X =

Date 1 =

Date 2 =

Dear :

This letter responds to your letter dated June 17, 2010, and subsequent correspondence, submitted on behalf of Trust, requesting a ruling under § 1361 of the Internal Revenue Code that the Service consent to revoke Trust's electing small business trust (ESBT) election as well as a ruling under § 301.9100-3 of the Procedure and Administration Regulations that the Service grant an extension of time for Trust to make a qualified subchapter S trust (QSST) election under § 1361(d)(2).

FACTS

The information submitted states that Trust is a shareholder of X, an S corporation, and that Trust elected to be treated as an ESBT effective Date 1. Trust requests that the Service consent to revoke Trust's ESBT election as of Date 2 and that it grant Trust an extension of time to elect to be treated as a QSST effective Date 2.

LAW AND ANALYSIS

Section 1361(d)(2)(A) provides that a beneficiary of a QSST (or his legal representative) may elect to have § 1361(d) apply. Section 1361(d)(2)(D) provides that an election under § 1361(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

Section 1361(d)(3) provides the term “qualified subchapter S trust” means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only 1 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, and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States. A substantially separate and independent share of a trust within the meaning of § 663(c) shall be treated as a separate trust for purposes of § 1361(d) and § 1361(c).

Section 1.1361-1(m)(6) of the Income Tax Regulations provides that an ESBT election may be revoked only with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the IRS in the form of a letter ruling request under the appropriate revenue procedure.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election to include an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based on the facts submitted and the representations made, we conclude that Trust may revoke its ESBT election effective Date 2. We further conclude that the requirements of § 301.9100-3 have been satisfied. As a result, Trust is granted an extension of time of 120 days from the date of this letter to file QSST elections for Trust effective Date 2. A copy of this letter should be attached to the QSST election. A copy is provided for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Trust is otherwise eligible to be a QSST under § 1361(d)(3).

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

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

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 ruling request, it is subject to verification on examination.

Sincerely,

/s/

Tara P. Volungis
Acting Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for § 6110 purposes

cc: