

Year 2 =
n =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4: =

A =

B =

C =

D =

Dear

This responds to a letter dated July 27, 2011, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X incorporated under the laws of State 1 on Date 1. X subsequently underwent two name changes and reincorporated under the laws of State 2. On Date 2, X timely elected to be an S Corporation effective Date 1 for Year 1 by filing Form 2553, Election by a Small Business Corporation, listing its employee identification number as “applied for.” On Date 3, the Service issued a letter notifying X that the Service accepted X’s S corporation election effective Date 1 under EIN1.

On Date 4, X filed a second Form 2553 under EIN2 requesting an effective date of Date 1. On Date 5, the Service issued a letter notifying X that the Service accepted X's S corporation election effective Date 6, the first day of Year 2, under EIN2. X filed Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1 under EIN2, treating Date 1 as the effective date of its election to be an S corporation. X represents that it has consistently filed its tax returns for all subsequent taxable years as an S corporation under EIN2.

At the time of incorporation, A owned all shares of X voting and nonvoting common stock. A subsequently transferred all nonvoting stock in X to various trusts, including Trust 1. On Date 7, Trust 1 transferred n shares of nonvoting common stock in X to each of three trusts: Trust 2, Trust 3, and Trust 4. B was the current income beneficiary of Trust 2 at all relevant times; C was the current income beneficiary of Trust 3 at all relevant times; and, D was the current income beneficiary of Trust 4 at all relevant times. X represents that Trust 2, Trust 3, and Trust 4 were eligible at all times to be treated as qualified subchapter S trusts ("QSSTs") under § 1361(d)(3); however, B, C, and D, failed to make timely QSST elections causing the termination of X's S corporation status on Date 7.

X represents that all other current and former trust shareholders of X are grantor trusts as described in § 1361(c)(2)(A)(i) or QSSTs as defined in § 1361(d)(3) for which timely elections were made under § 1361(d)(2). X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent. X further represents that X and its shareholders have filed tax returns consistent with X's status as an S corporation and as if Trust 2, Trust 3, and Trust 4 had made timely QSST elections. X and all of its current and former shareholders consent to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

LAW AND ANALYSIS

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) 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 and other than 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 1 class of stock.

Section 1361(d) provides that a QSST whose beneficiary makes an election under § 1361(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)(A) provides that for purposes of § 1361(d), the term "qualified subchapter S trust" means a trust, 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 beneficiary may be distributed only to such beneficiary; (iii) the 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 that beneficiary. Section 1361(d)(3)(B) requires the trust to distribute all of its income (within the meaning of § 643(b)) to 1 individual who is a citizen or resident of the United States.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness, steps were taken so that the corporation is a small business corporation; and (4) the corporation and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date 7 because Trust 2, Trust 3, and Trust 4 were not eligible shareholders of X. We also conclude that the termination of X's S corporation election on Date 7 was inadvertent within the meaning of § 1362(f). Therefore, X, under EIN 2, will be treated as an S corporation effective Date 1 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d). Going forward, the taxpayer should continue to file returns under EIN 2.

This ruling is contingent upon the filing of QSST elections by B, C, and D for Trust 2, Trust 3, and Trust 4, effective Date 7, with the appropriate service center within 60 days of the date of this ruling. A copy of this letter should be attached to each election.

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.

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, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. No opinion is expressed as to whether Trust 1 is a permissible S corporation shareholder, whether Trust 2, Trust 3, or Trust 4 qualifies as a QSST, or whether any other shareholder of X is a permissible S corporation shareholder.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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