

Internal Revenue Service

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PLR-148282-11

Date:

May 16, 2012

LEGEND

X =

A =

B =

Trust =

D1 =

D2 =

Court =

State =

Dear :

This responds to a letter dated November 3, 2011, submitted on behalf of Trust, requesting a ruling that Trust will qualify as a Qualified Subchapter S Trust (QSST) under section 1361(d)(3) of the Internal Revenue Code (the Code).

FACTS

According to the information submitted, X is an S corporation. A, a shareholder of X, died on D1. The shares of X held by A are to be transferred from A's estate to Trust.

Trust is created under the will of A for the benefit of B who is also the trustee. Under the terms of Trust, as provided in A's will, Trust was eligible to elect to be treated as a QSST except that, B had a power to appoint the income of Trust to someone other than himself. On D2, Court of State approved a petition filed by B and entered an Order modifying Trust to remove B's power to appoint the income of Trust to someone rather than himself. B is a citizen of the United States.

LAW AND ANALYSIS

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 1 class of stock.

Section 1361(c)(2)(A)(i) of the Code provides that for purposes of section 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) as owned by an individual who is a citizen or resident of the United States may be an S corporation shareholder.

Section 1361(d)(1) of the Code provides that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph 1361(d)(2) such trust shall be treated as a trust described in subsection 1361(c)(2)(A)(i) and for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph 1362(d)(2) is made.

Section 1361(d)(3) of the Code defines the term "qualified subchapter S trust" as a trust all of the income (within the meaning of section 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. In addition, the terms of the trust must require that (i) during the lifetime 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.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that Trust, as modified by the order of Court, meets the requirements of section 1361(d)(3). Accordingly, the Trust, as amended, will be a QSST within the meaning of section 1361(d)(3), provided that the proper election to be treated as a QSST is made by B, and all the net income of Trust is distributed to B.

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 or implied concerning the eligibility of X as an S corporation.

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

Sincerely,

Faith Colson

Faith Colson

Senior Counsel, Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes