

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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CC:PSI:B01

PLR-152620-11

Date:

May 23, 2012

Legend

X =

Y =

State =

Date1 =

Date2 =

Trust =

Dear :

This responds to a letter dated December 15, 2011, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be treated as an S corporation, effective Date2. X has been the sole shareholder of Y stock at all times since Date2. X elected to treat Y as a qualified subchapter S subsidiary (QSub) effective Date2.

Trust was a shareholder of X on Date2. X represents that Trust is eligible to be a qualified subchapter S trust (QSST) under § 1361(d) and intended to qualify as a QSST. However, the income beneficiary of Trust inadvertently failed to timely file the appropriate election under § 1362(d)(2). Therefore, both X's S corporation election and Y's QSub election were ineffective.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election and Y's QSub election were inadvertent and were not motivated by tax avoidance. X also represents that X and its shareholders have filed all returns consistent with X's status as an S corporation and Trust's classification as a QSST since D2. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation and Y as a QSub) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

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) provides that the term "small business corporation" means 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(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code – (i) a corporation which is a qualified subchapter S subsidiary shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), 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 citizen or resident of the United States may be a shareholder.

Section 1361(d)(1) 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 beneficiary

of such trust shall be treated as the owner (for purposes of § 678(a)) of that portion of the trust which 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 (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 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center where the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, 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 termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's S corporation election and Y's QSub election were ineffective for the taxable year beginning Date2. We further conclude that the circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date2, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d). We further conclude that Y will be treated as a QSub effective Date2, provided that Y's QSub election was otherwise valid and has not otherwise terminated.

This ruling is contingent upon the beneficiary of Trust filing a QSST election for Trust, effective Date2, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the QSST election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, no opinion is expressed regarding X's eligibility to be treated as an S corporation, Y's eligibility to be treated as a QSub, or Trust's eligibility to be treated as a QSST.

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,

Laura C. Fields

Laura C. Fields

Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes