

Internal Revenue Service

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LEGEND

X =

A =

B =

Trust1 =

Trust2 =

D1 =

D2 =

Year =

Dear :

This responds to a letter dated April 2, 2012, submitted on behalf of X by X's representative, requesting relief under § 1362(f) of the Code.

FACTS

According to the information submitted, X is an S corporation. During A's life, A, a shareholder of X transferred shares to Trust1. Trust1 was a trust described in § 1361(c)(2)(A)(i) and was an eligible shareholder of X. A died on D1.

Following A's death, it was intended that the X shares be transferred from Trust1 to Trust2. Trust2 is represented to be eligible to elect to be a qualified subchapter S trust (QSST), however, a QSST election was not made for Trust2.

The X shares held by Trust1 were not transferred to Trust2 by D2. As of D2, Trust1 was treated as a QSST, by X and B, the income beneficiary of both Trust1 and Trust2. Trust1 was, however, not eligible to elect QSST. Accordingly, X's S election terminated on D2 when shares of X were held by Trust1 and Trust1 became an ineligible shareholder.

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 their income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation.

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.

Section 1362(f) provides, that if (1) an election under 1362(a) by any corporation was terminated under paragraph § 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 such corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of such 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 facts submitted and representations made, we conclude X's S election terminated on D2 when Trust1 became an ineligible shareholder. We also conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from D2 and thereafter, provided that X's S election is valid and not otherwise terminated under § 1362(d).

This relief is contingent upon B filing a QSST election for Trust2 effective D2 within 120 days from the date of this letter. A copy of this letter should be attached to the election. In addition, within 120 days of the date of this letter, Trust2 must file original and amended returns treating Trust2 as a QSST and treating the X stock as having been transferred to Trust2 effective D2. Trust1 must file amended returns for all years subsequent to Year, treating the X stock as having been transferred to Trust2 as of D2.

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 or Trust2 as a QSST.

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
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

cc: