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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-128348-13
Date:
January 06, 2014

Legend:

X =

A =

B =

C =

D =

Family Trust =

Trust B =

Trust C =

Trust D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

State =

Dear :

This letter responds to a letter dated June 15, 2013, submitted on X's behalf by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code (the Code).

Facts

According to the information submitted, X was incorporated on Date 1, under the laws of State. X elected to be taxed as an S corporation effective the same date.

On Date 2, A, a shareholder of X, died. Pursuant to A's will, A's X shares were transferred to Family Trust. Family Trust was an eligible shareholder of X under § 1361(c)(2)(A)(iii) for a two-year period ending Date 3.

Under the terms of A's will, the X shares were held in separate shares of Family Trust for the benefit of B, C, and D. Each share was intended to be treated as qualified subchapter S trust (QSST) effective Date 3. However the beneficiaries of the separate shares failed to file timely QSST elections. X represents that the separate shares qualified as QSSTs under § 1361(d) as of Date 3 and thereafter with the exception of one year in which the Trustee failed to distribute all of the income to the beneficiaries.

Family Trust transferred the X shares to Trust B, Trust C, and Trust D. Each trust qualifies as a QSST and each beneficiary filed a QSST election effective Date 4.

X represents that the circumstances resulting in the failure to file QSST elections for the X shares held by Family Trust as of Date 3 was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such 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) of the Code 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) 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) provides that for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1362(c)(2)(A)(iii) provides that for the purposes of § 1361(b)(1)(B), a trust with respect to stock transferred to it pursuant to the terms of a will may be a shareholder, but only for the 2-year period beginning on the day on which the stock is transferred to it.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under § 1362(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. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

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); (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 or 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 the 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 ineffectiveness or 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 the representations made, we conclude that X's S corporation election terminated on Date 3 as a result of the failure to file QSST elections for the separate shares held by Family Trust. We further conclude that the termination of X's S election on Date 3 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as of Date 3 and thereafter, and that the separate shares held for the benefit of B, C, and D will be treated as QSSTs from Date 3 until Date 4. Trust B, Trust C and Trust D will be treated as QSSTs as of Date 4 and thereafter provided that the trusts' QSST elections are otherwise valid.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately and non-separately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account any distributions made by X as of provided in § 1368.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Faith P. Colson

Faith P. Colson
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes

cc: