

Trust1 =

Trust 2 =

Sub =

Years =

n =

Dear :

This letter responds to a letter dated July 25, 2014, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code) and relief pursuant to § 301.9100-3(a) of the Procedure and Administration Regulations for X to be granted an extension of time to elect to treat Sub as a qualified subchapter S subsidiary (QSub) under § 1361(b)(3)(B).

FACTS

The information submitted states that X was organized under the laws of State on D1 and elected to be an S corporation effective D2. Shareholder transferred shares in X to Trust1 on D3. Shareholder died on D4. On D5, Trust1 transferred the shares in X to Trust2 for the benefit of Income Beneficiary. On D6, Income Beneficiary died.

During the years between D5 and D6, X represents that Trust2 was eligible to be a qualified subchapter S trust (QSST) within the meaning of § 1361(d), but Income Beneficiary did not timely file a QSST election. X also represents that Trust2 was eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) on D6 and thereafter, but the trustee did not timely file an ESBT election. Therefore, on D5, X's S corporation election terminated.

X represents that the termination was not motivated by tax avoidance or retroactive tax planning. X further represents that it has filed consistently as an S corporation since D2. X and its shareholder have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

As of D7, X owned 100 percent of Sub's stock. X represents that it intended to elect to treat Sub as a QSub effective D7. However, due to inadvertence, X did not timely file a Form 8869, Qualified Subchapter S Subsidiary Election, on behalf of Sub.

X represents that it and Sub have filed tax returns for all the relevant tax years consistent with the tax treatment of Sub as a QSub from D7.

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(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(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B) an ESBT 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 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust. Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2)(A) 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 terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken (A) so that the corporation is a small business corporation, and (4) the corporation and each person who was a shareholder of 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 the termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a QSub.

Section 1.1361-3(a) prescribes the time and manner for making an election to be classified a QSub. Section 1.1361-3(a)(4) provides that an election to treat an eligible subsidiary as a QSub may be effective up to two months and 15 days prior to the date the election is filed but cannot be effective more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified Subchapter S Subsidiary Election.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term “regulatory election” as an election whose due date is prescribed by a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections.

Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Under § 301.9100-3, a request for relief will be granted when the taxpayer provides the evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X’s S corporation election terminated on D5 when X had an ineligible shareholder. In addition, had X’s S corporation election not terminated on D5, it would have terminated on D6. We conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as an S corporation from D5 and thereafter, provided X’s S corporation election was otherwise valid and has not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

This ruling is conditioned on: 1) the estate of Income Beneficiary filing, on behalf of Income Beneficiary, a QSST election for Trust2, effective D5, with the appropriate service center within 120 days of the date of this letter, and 2) the trustee of Trust2 filing an ESBT election, effective D6, 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 and ESBT elections.

In addition, this ruling is conditioned on Trust2 filing any amended returns and making adjustments that are necessary to properly reflect the treatment of Trust2 as an ESBT for Years taxable years.

Furthermore, as an adjustment under § 1362(f), a payment of \$n and a copy of this letter ruling must be sent to the following address: Internal Revenue Service,

Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41011, Stop 31, Terri Lackey, Manual Deposit. The payment and a copy of this letter must be sent no later than D8.

If all of the above conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send a notification that its S corporation election has terminated to the service center with which X's S corporation election was filed.

Based solely on the facts submitted and the representations made, we also conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, X is granted an extension of time of 120 days from the date of this letter to file Form 8869, Qualified Subchapter S Subsidiary Election, with the appropriate service center to elect to treat Sub as a QSub effective D7. A copy of this letter should be attached to the Form 8869.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation under § 1361, or whether Sub otherwise meets the definition of a QSub under § 1361(b)(3)(B).

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

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

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: _____
Mary Beth Carchia
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes