

Internal Revenue Service

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Date:
April 08, 2015

LEGEND

X =

A =

Trust 1 =

Trust 2 =

Trust 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year =

State =

Dear _____ :

This responds to a letter signed October 15, 2014, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1 under the laws of State and elected to be taxed as an S corporation effective Date 2.

A, a shareholder of X, transferred his shares in X to Trust 1, a revocable trust, prior to his death on Date 3. Following the death of A, a portion of the X stock held by Trust 1 was distributed to Trust 2 on Date 4. B is the beneficiary of Trust 2. Trust 2 is a surviving trust of a merger between Trust 2 and Trust 3 which was accomplished prior to Date 4. B failed to file a valid QSST election for Trust 2 effective Date 4.

X represents that the inadvertent invalid QSST election was discovered in Year. X represents that the errors made in filing the QSST election for Trust 2 were unintentional and were not motivated by tax avoidance or retroactive tax planning.

X represents that Trust 2 has received schedule K-1's since Date 4 and X further represents that all income has been reported on all affected returns of X and all of its shareholders consistent with the treatment of X as an S corporation and that neither X nor any of its shareholders intended to terminate X's Subchapter S election. In addition, X represents that Trust 2 has qualified as a QSST under § 1361(d) at all times since Trust 2 acquired the X stock on Date 4, and other than the inadvertent failure to timely file a valid QSST election for Trust 2, X has qualified as a small business corporation at all times since its election on Date 2. Further, as of Date 4, B has filed consistent with the treatment of Trust 2 as a QSST. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that 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(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 1361(d)(3) provides that for purposes of § 1361(d), the term "qualified subchapter S trust" means a trust (A) the terms of which require that – (i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust; (ii) any corpus distributed during the life of the current 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 that beneficiary; and (B) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

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 by signing and filing with the service center with which the corporation files its income tax the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1.1361-1(j)(6)(iii)(A) provides that if S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

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 (d)(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 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 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 the failure to file a valid QSST election for Trust 2 caused a termination of X's S corporation election and that the S corporation election therefore terminated on Date 4. We further conclude that the termination of X's S election on Date 4 was inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from Date 4 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 Trust 2 effective Date 4 within 120 days from the date of this letter. A copy of this letter should be attached to the election.

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 or Trust 2's eligibility as a QSST.

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 your 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

cc: