

Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:PSI:B01

PLR-104446-15

Date:

August 04, 2015

LEGEND

X =

A =

B =

C =

D =

E =

Trust 1 =

Trust 2 =

Trust 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Years =

State =

Dear :

This responds to a letter dated January 27, 2015, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations within, X was incorporated under the laws of State on Date 1. S elected to be treated as an S corporation effective Date 2. On Date 2, Trust 1, a grantor trust, was an eligible shareholder of X. On Date 3, A, the grantor of Trust 1, died. As of Date 4, an Electing Small Business Trust (ESBT) election was not timely filed for Trust 1, thereby causing Trust 1 to become an ineligible shareholder of X.

On Date 5, shares in X were transferred from Trust 1 to B and C, both eligible shareholders, and to Trust 2 and Trust 3. D and E, the beneficiaries of Trust 2 and Trust 3 respectively, failed to make timely Qualified subchapter S subsidiary (QSST) elections.

X represents that Trust 1 intended to be an ESBT effective Date 4 and that Trust 2 and Trust 3 intended to be QSSTs effective Date 5. However, a timely ESBT election was not filed for Trust 1 and timely QSST elections were not filed for Trust 2 and Trust 3.

In addition, within the meaning of § 1361(d)(3), X represents that Trust 1 has at all times met the requirements of an ESBT except that the trustee of Trust 1 did not make a timely ESBT election under §1361(e)(3). X further represents that Trust 1 has not filed its income tax returns consistent with being an ESBT for Years. X represents that Trust 2 and Trust 3 have qualified as QSSTs under § 1361(d) at all times, except that D and E

failed to file timely QSST elections. X also represents that since Date 5, Trust 2 and Trust 3 have filed their income tax returns consistent with being a QSST. X further represents that X, its shareholders, and Trust 1's beneficiaries, will amend their income tax returns for Years within 120 days of the date of this ruling letter to reflect treatment of Trust 1 as an ESBT.

X represents that the termination of its S election, and potential later termination of its S election, was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X represents that, other than the failure to make a valid ESBT election on Date 4 and valid QSST elections on Date 5, X has qualified as a small business corporation at all times since its election on Date 2.

X represents that X and its shareholders have treated X as an S corporation at all relevant times. X represents that the failure to file an ESBT election for Trust 1 and the failure to file QSST elections for Trust 2 and Trust 3 were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed its income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation. 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) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the terms "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 1 class of stock.

Section 1361(c)(2)(A)(i) 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(c)(2)(A)(v) provides that, for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(d)(1) 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) 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 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations 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 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(a)(1) provides that except as provided in subsection (g), a small business corporation may elect to be an S corporation. Section 1362(a)(2) provides that an election under § 1362(a) shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall 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 relevant part, that if (1) an election under subsection (a) or section 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to

meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C); (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 (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) 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 or a qualified subchapter S subsidiary, as the case may be during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election terminated on Date 4 because no ESBT election was made for Trust 1. Furthermore, if X's S election had not terminated on Date 4, it would have terminated on Date 5 because QSST elections were not filed for Trust 2 or Trust 3. We further conclude that the termination on Date 4, and potential later termination on Date 5, of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 4 and thereafter, provided X's S election is not otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions. Within 120 days of the date of this letter: (1) the trustee of Trust 1 must file an ESBT election under section 1361(e)(3) for Trust 1, effective Date 4; (2) the beneficiaries of Trust 2 and Trust 3 must file a QSST election under section 1361(d)(2)(A) for their respective trust, effective Date 5; and (3) X, Trust 1, and Trust 1's beneficiaries must amend or file returns for Years, consistent with the treatment of Trust 1 as an ESBT.

These elections should be made with the appropriate service center within 120 days from the date of this letter. A copy of this letter ruling should be attached to each election. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

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 whether X otherwise qualifies as an S corporation for federal tax purposes.

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,

Joy C. Spies

Joy C. Spies

Senior Technician Reviewer, 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