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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B01

PLR-100344-15

Date:

June 30, 2015

Legend

X =

Y =

A =

B =

C =

D =

Trust 1 =

Trust 2 =

Trust 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Years 1 =

Years 2 =

Years 3 =

Years 4 =

Years 5 =

State =

\$a =

\$b =

Dear :

This responds to a letter dated December 18, 2014, 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 on Date 1, under the laws of State. X elected to be treated as an S corporation effective Date 2.

As of Date 2, Trust 1, Trust 2, and Trust 3 were shareholders of X. X represents that Trust 1 was eligible to make an Electing Small Business Trust (ESBT) election as of Date 2. However, the trustee of Trust 1 inadvertently failed to file an ESBT election. X represents that Trust 2 was eligible to make a Qualified Subchapter S Trust (QSST) election as of Date 2. However, the income beneficiary of Trust 2 inadvertently failed to file a QSST election.

Effective Date 2, X elected to treat Y as a Qualified Subchapter S Subsidiary (QSub). However, X's S election was not valid on Date 2, thus invalidating X's QSub election. X represents that, at all times on and after Date 2, X has owned all of the outstanding stock of Y. X represents that it intended to elect to treat Y as a QSub effective Date 2 and that X has filed tax returns for all tax years consistent with the treatment of Y as a QSub.

X represents that on Date 2, Trust 3, a grantor trust, was an eligible shareholder of X under § 1361(c)(2)(A)(i). On Date 3, B, the grantor of Trust 3, died. Upon B's death, a sub-trust of Trust 3 was created and all of the assets from Trust 3 were allocated to the sub-trust. The sub-trust was administered as a Family Trust for the benefit of C. As of Date 4, an ESBT election was not timely filed for Trust 3, thereby causing Trust 3 to become an ineligible shareholder of X. Trust 3 held the X shares until Date 5, when the X shares were transferred to D, an eligible shareholder.

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

X represents that the circumstances resulting in the failure to make the ESBT and QSST elections were inadvertent and 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. X represents that other than the failure to make valid ESBT elections on Date 2 and Date 4, and a valid QSST election on Date 2, X has qualified as a small business corporation at all times since its election on Date 2. Lastly, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

In addition, X represents that Trust 1 has at all times since Date 2 met the requirements of an ESBT under § 1361(d)(3) and that Trust 3 has met the requirements of an ESBT since Date 4. X further represents that Trust 1 has not filed its income tax returns consistent with being an ESBT for Years 1 and that Trust 3 has not filed its income tax returns consistent with being an ESBT for Years 2. X represents that Trust 2 has qualified as a QSST under § 1361(d) at all times, with the exception of Years 3, since

Trust 2 acquired X stock on Date 2. X also represents that since Date 2, Trust 2 has been treated as a QSST for Years 4.

X represents that the inadvertent invalid election and potential later termination of its S corporation election was inadvertent and was not motivated by tax avoidance or retroactive tax planning.

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(b)(3)(A) generally provides that a QSub shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a QSub as a domestic corporation which is not an ineligible corporation, 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 Qualified subchapter S subsidiary .

Section 1361(c)(2)(A)(i) provides that, for purposes of section 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1) 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 S corporation shareholder.

Section 1361(d)(1) provides that, in the case of a QSST 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 a QSST 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 1.1361-3(a) prescribes the time and manner for making an election to be classified as a QSub.

Section 1.1361-3(a)(4) provides that an election may be effective up to two months and 15 days prior to the date the election is filed or not 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 1362(a)(1) 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 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 § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (A) 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) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) § 1362(d) or § 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 QSub, 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 § 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a Qsub, 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 Qsub, 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 was ineffective on Date 2, and that if the election has been effective it would have terminated on Date 4. We further conclude that the missed QSST and ESBT elections that caused the ineffectiveness/termination were inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions. No later than 120 days from the date of this letter: (1) As an adjustment under § 1362(f)(4), a payment of \$a and a copy of this letter 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; (2) the trustee of Trust 2 must make a distribution of \$b to A; (3) X and each of its shareholders must file any original and amended returns for Years 5 consistent with the relief granted in this letter; (4) the trustee of Trust 1 must file an ESBT election for Trust 1, effective Date 2; (5) the beneficiary of Trust 2 must file a QSST election for Trust 2, effective Date 2; and (6) the trustee of Trust 3 must file an ESBT election for Trust 3, effective Date 4.

These elections must be made with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the elections. 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.

Furthermore, Y will be treated as a QSub effective Date 2 and thereafter, provided Y otherwise is eligible to be treated as a QSub.

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, or whether Y is eligible to be a QSub, 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 representatives.

Sincerely,

Joy C. Spies

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes