

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
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Date:
June 16, 2016

Legend

X =

A =

B =

Court =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

n =

Dear _____ :

This letter responds to a letter dated December 31, 2015, and subsequent correspondence, submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective Date 2. A was the sole initial shareholder of X. During A's lifetime, A transferred n shares to Trust 1, a grantor trust that was treated (under subpart E of part I of subchapter J of chapter 1) as entirely owned by A. Trust 1 was an eligible shareholder under §1361(c)(2)(A)(i). On Date 3, A died, causing Trust 1 to cease being a grantor trust. Under §1361(c)(2)(A)(ii), Trust 1 remained an eligible shareholder until Date 4, two years after A's death. Trust 1 did not distribute the shares of X stock on or before Date 4. Accordingly, Trust 1 ceased to be an eligible shareholder on Date 5. X represents that beginning Date 5, Trust 1 would have qualified as a electing small business trust ("ESBT") under § 1361(e)(1), however no ESBT election was filed.

On Date 6, the shares were assigned from Trust 1 to Trust 2 for the benefit of B. On Date 7, B filed a qualified subchapter S trust (QSST) election effective Date 6. On Date 8, Court entered an order reforming Trust 1. Pursuant to that order, on Date 9,

Trust 2 was divided into three separate trusts, Trust 3, Trust 4, and Trust 5, for the benefit of B. X represents that Trust 3, Trust 4, and Trust 5 would have qualified as QSSTs, however no QSST elections were made.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 to timely transfer the shares of X to Trust 2. X also represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 to make an ESBT election or the failure of Trust 3, Trust 4, and Trust 5 to make QSST elections. X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation and Trust 1, Trust 3, Trust 4 and Trust 5 as eligible shareholders, as may be required by the Secretary.

Law and Analysis

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)(B) provides that the term “small business corporation” means a domestic corporation that is not an ineligible corporation and that does not, among other requirements, 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.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of this title (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) 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) provides that, for purposes of § 1361(b)(3)(B), the term “qualified subchapter S subsidiary” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)) if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

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 I of subchapter J of chapter 1 of the Code) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1361(c)(2)(A)(ii) provides that for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed

owner and which continues in existence after such death, is a permitted shareholder, but only for the 2-year period beginning on the day of the deemed owner's death.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 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 § 1361(d)(2) is made. Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d)(1) apply.

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(d)(2)(A) provides that an election under § 1362(a) is 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 that if (1) an election under § 1362(a) or § 1361(b)(3)(B)(ii) by any corporation (i) 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 (ii) was terminated under § 1362(d)(2) or (3) 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 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 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 of the corporation at any time during the period specified pursuant to § 1362(f), agree to make the adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the 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 representations made, we conclude that X's S corporation election terminated on Date 5 when Trust 1 became an ineligible

shareholder, and that the termination was inadvertent within the meaning of § 1362(f). We also conclude that if X's S corporation election had not already terminated, X's S corporation election would have terminated on Date 9 when shares of X stock were transferred to Trust 3, Trust 4, and Trust 5. Consequently, we rule that X will be treated as an S corporation from Date 5 and thereafter provided that X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the trustee of Trust 1 filing an ESBT election effective Date 5 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT election. In addition, this ruling is contingent on the beneficiary (or beneficiary's representative) of Trust 3, Trust 4, and Trust 5 filing a QSST election effective Date 9 with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to each QSST election.

Except as specifically ruled above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was otherwise a valid S corporation and whether Trust 1 is a valid ESBT and whether Trust 2, Trust 3, Trust 4, and Trust 5, are valid QSSTs.

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 for precedent.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the rulings requested, it is subject to verification on examination.

Sincerely,

Richard T. Probst
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for §6110 purposes

cc: