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Department of the Treasury  
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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

Refer Reply To:  
CC:PSI:B03  
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Date:  
October 31, 2016

X =

State =

$$\underline{\underline{D1}} =$$
D2 =
$$\overline{\overline{\text{D3}}} =$$
D4 =D5 =

D6 =

Trust 1 =

Trust 2 =

Trust 3 =Trust 4 =Trust 5 =

Trust 6 =

Trust 7 =

Trust 8 =
$$\underline{A} =$$
$$\underline{\underline{B}} =$$
$$\underline{\underline{C}} =$$
D =

Dear \_\_\_\_\_ :

This responds to a letter dated April 12, 2016, submitted on behalf of X by its authorized representative, requesting rulings under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State and elected to be an S corporation effective D1. On D2, each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 were created. Each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 also received shares of X on D2. Trust 1, Trust 2 and Trust 3 have been shareholders of X at all times since D2. On D3, the respective shares of X owned by Trust 5 and Trust 6 were cancelled and new shares were issued to A and B, respectively. On D4, the shares of X owned by Trust 4 were distributed to C, as custodian of D. The information submitted further states that Trust 7 was established on D5 and that Trust 7 received shares of X beginning on D5. Finally, Trust 8 was established on D6 and received shares of X on or after D6.

X represents that each of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 has met the electing small business trust (ESBT) requirements under § 1361(e)(1) at all relevant times since and including D2. However, the respective trustees of the six trusts failed to file an ESBT election with respect to each of the six trusts. X further represents that Trust 7 and Trust 8 have been eligible to elect qualified subchapter S trust (QSST) treatment under § 1361(d). However, the respective beneficiaries of Trust 7 and Trust 8 inadvertently failed to timely make a QSST election with respect to these trusts.

X represents that the respective failures to file ESBT or QSST elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that from D2, X and its shareholders have filed all returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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(d)(1) provides that in the case of a QSST for 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 the trust shall be treated as the owner of that portion of the trust that 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) apply. Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of a QSST must make the election under § 1361(d)(2) by signing and filing with the

service center with which the corporation files its income tax returns 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)(2)(B), an ESBT means any trust if (1) 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) 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 1362(d)(2) provides that (A) in general, an election under § 1362(a) shall 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, and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) 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 § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, 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 ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D2, because of the failure of the trustees of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 to make the required ESBT elections. We further conclude that if the trustees of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 did make the required ESBT elections, then X's S corporation election would have terminated on D5, due to the failure of the beneficiary of Trust 7 to

file a QSST election with respect to Trust 7, or on D6, due to the failure of the beneficiary of Trust 8 to file a QSST election with respect to Trust 8. Finally, we conclude that this termination of X's S corporation election was an inadvertent termination within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from D2 and thereafter, provided X's S corporation election was valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon the respective trustees of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6 filing ESBT elections for Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 and Trust 6, with an effective date of D2 with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each of the ESBT elections. This ruling is further contingent on the respective beneficiaries of Trust 7 and Trust 8 filing QSST elections for Trust 7 and Trust 8 with effective dates of D5 and D6, respectively, with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to the QSST elections. If X or its shareholders fail to treat X as described above, this letter ruling will be null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X is a small business corporation under § 1361(b), or whether Trust 1, Trust 2, Trust 3, Trust 4, Trust 5 or Trust 6 is an ESBT within the meaning of § 1361(e), or whether Trust 7 and Trust 8 is a QSST within the meaning of § 1361(d)(3).

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures: 2  
Copy of this letter  
Copy for § 6110 purposes

cc: