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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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Date:
April 24, 2017

Legend

X =

Trust =

Y =

A =

N =

Estate =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear _____ :

This letter responds to a letter dated December 16, 2016, 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 and elected to be an S corporation effective Date 1. On Date 2, A, the sole shareholder of X, transferred A's entire interest in X to Y, a limited liability company wholly owned by A and treated as a disregarded entity for federal tax purposes. On Date 3, A transferred a n% interest in Y to Trust, a grantor trust that was treated (under subpart E of part I of subchapter J of chapter 1) as entirely owned by A. Trust was an eligible shareholder under §1361(c)(2)(A)(i). On Date 4, A died, causing Trust to cease being a grantor trust. On Date 4, X's S corporation election terminated as Y, the sole owner of X, became a partnership for federal tax purposes, an ineligible shareholder. On Date 5, Y redeemed the shares of Estate (which were received by Estate at A's death), causing Y to be treated as a disregarded entity owned by Trust for federal tax purposes.

X represents that the termination event was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

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(c)(2)(A)(i) provides that, for the purposes of § 1362(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)(ii) provides that, for purposes of § 1362(b)(1)(B), a trust which is described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death may be an S corporation shareholder, but only for the 2-year period beginning on the date of the deemed owner's death.

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.

Section 1.1362-4(b) of the Income Tax Regulations provides, in relevant part, that for purposes of § 1.1362-4(a), the determination of whether a termination was inadvertent is made by the Commissioner. The corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the termination was not reasonably within the control of the corporation or was not part of a plan to terminate the election, or the fact that the terminating event or circumstances took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard itself

against such an event or circumstance, tends to establish that the termination was inadvertent.

Section 1.362-4(d) provides, in relevant part, that the Commissioner may require any adjustments that are appropriate. In general, the adjustments should be consistent with the treatment of the corporation was an S corporation during the period specified by the Commissioner.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 4. We further conclude that the circumstances resulting in the termination on Date 4 were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as an S corporation from Date 4, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(f).

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.

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 representative.

The ruling contained in this letter is 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,

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