

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

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Date:  
July 05, 2017

LEGEND

X =

Y =

A =

B =

Sub =

Trust =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter responds to a letter dated February 23, 2017, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code (Code).

### Facts

According to the information submitted, X was incorporated under laws of State A on Date 1 and made an election to be treated as an S corporation effective Date 2. Sub was incorporated under the laws of State B on Date 3 and was at all times wholly-owned by X. The information submitted states that the Form 2553 that X filed was not signed by A, the income beneficiary of Trust, which was a qualified subchapter S trust (QSST) within the meaning of § 1361(a). Therefore, X's S corporation election was ineffective.

X elected to treat Sub as a Qualified Subchapter S Subsidiary (QSub) effective Date 4. Because X's S corporation election was ineffective, X's election to treat Sub as a Qsub was also ineffective.

On Date 5, A died. Upon the death of A, the X stock was distributed to individuals who were eligible shareholders of X. B was the executor of A's estate and has been appointed as a special administrator with regard to A's estate to resolve X's ineffective S corporation election.

On Date 6, incident to what was intended to qualify as a reorganization under § 368(a)(1)(F), X's shareholders contributed all of their stock in X to Y in exchange for shares in Y. Effective immediately afterwards, Y made an election to treat X as a qualified subchapter S subsidiary (Qsub).

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust to properly execute X's Form 2553. X further represents that X and all its shareholders have filed consistently with X having a valid S corporation election as of Date 2 and Sub being a valid Qsub as of Date 4. X and its shareholders have agreed to make any adjustment that the Commissioner may require, consistent with the treatment of X as an S corporation and Sub as a Qsub.

### 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, for purposes of subchapter S, 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(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(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(a)(2) provides that an S corporation election 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 1.1362-6(b)(2)(iv) provides that in the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trusts described in section 1361(c)(2)(A)(v)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election.

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 the representations made, we conclude that X's S corporation election and X's election to treat Sub as a Qsub were ineffective on Date 2 and Date 4, respectively. We further conclude that the ineffectiveness of X's S corporation election and Sub's Qsub election constituted inadvertent invalid elections within the meaning of 1362(f). Consequently, under 1362(f), we rule that X will be treated as continuing to be an S corporation from Date 2 through Date 6, when X became a Qsub, provided that X's S election was otherwise valid and not otherwise terminated under 1362(d). Furthermore, Sub will be treated as a Qsub of X from Date 4 and thereafter, provided that Sub's Qsub election was otherwise valid and not otherwise terminated under 1361(b)(3)(C).

This relief is contingent upon B, the executor of A's estate, signing a written statement as described in 1.1362-6(b)(1) consenting to X's S corporation election effective Date 2. The written statement must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement is to be associated with X's originally filed Form 2553.

Except as specifically ruled above, we express or imply no opinion as to the federal income 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 Sub was otherwise a valid Qsub. In addition, we express or imply no opinion on whether the transactions on Date 6 qualified as an F reorganization within the meaning of § 368(a)(1)(F).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code 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 ruling will be sent to X's authorized representatives.

Sincerely,

*Faith P. Colson*

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Faith P. Colson  
Senior Counsel, Branch 1  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: