

## Internal Revenue Service

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Washington, DC 20224

Third Party Communication: None

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PLR-113266-17

Date:

September 5, 2017

### LEGEND

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

A =

Trust =

Dear :

This letter responds to a letter dated April 19, 2017, and subsequent correspondence, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

### FACTS

The information submitted states that X was incorporated under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2.

A, a shareholder of X, died on Date 3. On Date 4, pursuant to the terms of A's will, shares of X were transferred from A's estate to Trust. X represents that Trust qualifies as a qualified subchapter S trust (QSST) within the meaning of § 1361(d)(3). However, the trustee of Trust failed to make an election under § 1361(d)(2) to treat Trust as a QSST. As a result, X's S corporation election terminated on Date 4.

X represents that the failure to file a QSST election and the resulting termination of its S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Further, immediately upon the discovery of the termination, X and its shareholders took corrective action to rectify the situation and to restore X's status as an S corporation, including the transfer of X stock to certain eligible shareholders on Date 5. Additionally, X and its shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary.

### LAW

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 section 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as 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 one class of stock.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under § 1362(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of § 678(a)) of that portion of the QSST's S Corporation stock to which the election under § 1361(d)(2) applies. Under § 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

Section 1361(d)(3) defines a QSST as a trust (A) the terms of which require that (i) during the life 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 beneficiary in the trust shall terminate on the earlier of the 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 that beneficiary; and (B) all of the income (within the meaning of § 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.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation 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, (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in ineffectiveness, steps were taken so that the corporation is once more a small business corporation, 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 any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period, then, notwithstanding the circumstances resulting in the ineffectiveness, the corporation shall be treated as continuing to be an S corporation 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 terminated on Date 4 when the trustee of Trust failed to file a QSST election under § 1361(d)(2). We further conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f) X will be treated as continuing to be an S corporation on and after Date 4, provided X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the following: (1) the trustee of Trust filing a QSST election effective Date 4 with the appropriate service center within 120 days of the date of this letter; (2) a copy of this letter should be attached to the QSST election; and (3) Trust filing within 120 days of the date of this letter any amended returns and making adjustments that are consistent with the requested treatment of Trust as a QSST.

If the above conditions are not met, then this ruling is null and void. In addition, if these conditions are not met, X must send notification that its S corporation election has terminated to the service center with which X's S corporation election was filed.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or Trust's eligibility to be a QSST.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3) of the Code, this ruling may not be used or cited as precedent.

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 ruling request, it is subject to verification on examination.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

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 of this letter for § 6110 purposes