

## Internal Revenue Service

Number: **201805009**  
Release Date: 2/2/2018  
Index Number: 1362.04-00

Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
 , ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:01  
PLR-116952-17  
Date:  
October 30, 2017

### Legend

X =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

A =

B =

C =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Dear :

This responds to a letter dated May 24, 2017, and subsequent correspondence submitted on behalf of X by X's authorized representatives, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue 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 2. On Date 2, A and B each owned shares of X. On Date 3, A transferred shares of X stock to Trust 1, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. On Date 3, B transferred shares of X stock to Trust 2, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676.

On Date 4, A died and Trust 1, pursuant to its terms, transferred its shares of X to Trust 2.

On Date 5, B transferred shares of X stock to Trust 3. X represents that Trust 3 intended to be a qualified subchapter S trust (QSST) described in § 1361(d)(3)(A) as of Date 5 and thereafter. However, C, the income beneficiary, failed to make a QSST election within the meaning of § 1361(d)(2), thereby causing X's S corporation election to terminate on Date 5.

On Date 6, B died and Trust 2 ceased to be a grantor trust, but continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the two year period beginning on the date of B's death.

Effective Date 7, Trust 2, pursuant to its terms, transferred its shares of X stock to Trust 4. X represents that Trust 4 intended to be a qualified subchapter S trust (QSST) described in § 1361(d)(3)(A) as of Date 7 and thereafter. However, C, the income beneficiary, failed to make a QSST election within the meaning of § 1361(d)(2), thereby causing X's S corporation election to terminate on Date 7.

X represents that all circumstances resulting in the termination of its S corporation election were inadvertent and not motivated by tax avoidance. Further, since Date 5, X and X's shareholders have continually treated X as an S corporation. As such, all items of income, gain, loss, and deduction recognized by X since Date 5 have been allocated among the shareholders of X. X and its shareholders agreed to make such 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 § 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 1 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(d)(1) provides that a QSST, whose beneficiary makes an election under § 1361(d)(2), will be treated as a trust described in § 1361(c)(2)(A)(i), and the beneficiary of such trust shall be treated as the owner (for purposes of § 678(a)) of that portion of the trust which consist of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center where the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (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 such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to 1362(f), agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation 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 beginning on Date 5, when the stock in X was transferred to Trust 3 because a timely QSST election was not filed under § 1361(d)(2). We conclude that the termination was inadvertent within the meaning of § 1362(f).

Moreover, had X's S corporation election not already terminated on Date 5, it would have terminated on Date 7, when stock was transferred to Trust 4, and a timely QSST election was not filed for the trust. Similarly, this would have been inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from Date 5 provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d). This ruling is conditioned upon the income beneficiary of Trust 3, and Trust 4 filing a QSST election for each trust effective upon the date the trust received shares of X. All elections must be filed with the appropriate service center within 120 days of the date of this ruling. A copy of this letter should be attached to each QSST election.

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account distributions made by X as provided by § 1368.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation or whether Trust 3 and Trust 4 are eligible to be treated as QSSTs.

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. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

*Laura C. Fields*

Laura C. Fields  
Senior Technician Reviewer, Branch 1  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of Letter  
Copy for 6110 purposes

cc: