

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:
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Telephone Number:

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Date:
March 13, 2018

Legend

X =

State =

Date 1 =

Date 2 =

Date 3 =

Trust 1 =

Trust 2 =

Trust 3 =

Dear :

This letter responds to a letter dated August 31, 2017, and subsequent correspondence, submitted on behalf of X by its authorized representatives, 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. X elected to be an S corporation effective Date 2. Each of Trust 1, Trust 2, and Trust 3 received shares in X on Date 3. X represents that Trust 1, Trust 2, and Trust 3 have been eligible to elect qualified subchapter S trust (QSST) treatment under § 1361(d) since Date 3. However, the respective beneficiaries of the trusts inadvertently failed to timely make a QSST election with respect to these trusts. As a result, X's S corporation election terminated on Date 3.

X represents that the respective failures to file QSST elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that from Date 3, 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.

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) 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 1 class of stock.

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 Internal Revenue 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, in pertinent part, that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2): (A) the trust is treated as a trust described in § 1361(c)(2)(A)(i) and (B) for purposes of § 678(a), the beneficiary of the trust is 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 (or his legal representative) may elect to have § 1361(d) apply.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations 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 with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(a) 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) 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.

Section 1362(f) provides, in pertinent part, 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 on Date 3 because the beneficiaries of Trust 1, Trust 2, and Trust 3 failed to make elections under § 1361(d)(2)(A) for these trusts. We also conclude that the termination of X's S corporation election was inadvertent within the meaning of § 1362(f).

Accordingly, under § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d), and provided that the beneficiaries of Trust 1, Trust 2, and Trust 3 file an election under § 1361(d)(2)(A) for their respective trusts with an effective date of Date 3 with the appropriate service

center within 120 days from the date of this letter. A copy of this letter should be attached to the elections under § 1361(d)(2)(A).

Except as expressly provided herein, we express or imply no opinion concerning the Federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion concerning whether Trust 1, Trust 2 or Trust 3 are otherwise eligible to be QSSTs or whether X is otherwise eligible to be an S corporation for Federal tax purposes.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

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.

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.

Sincerely,

Caroline E. Hay
Assistant to the Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: