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Department of the Treasury  
Washington, DC 20224

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Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

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PLR-133340-17  
Date:  
March 07, 2018

## LEGEND

X =

State =

D1 =D2 =D3 =D4 =D5 =Trust1 =Trust2 =Trust3 =Trust4 =Trust5 =

Dear \_\_\_\_\_ :

This letter responds to a letter dated October 30, 2017, and additional information, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code.

### FACTS

X was formed under the laws of State on D1 and elected to be an S corporation effective D2. On D3, a shareholder transferred shares of X's outstanding stock to Trust1 and to Trust2. X represents that Trust1 was eligible to be a qualified subchapter S trust (QSST) within the meaning of § 1361(d) on D3, but the income beneficiary did not timely file a QSST election. X also represents that Trust2 was eligible to be an electing small business trust (ESBT) within the meaning of § 1361(e) on D3, but the trustee did not timely file an ESBT election. Therefore, neither Trust1 nor Trust2 was a permitted shareholder and X's S corporation election terminated on D3.

On D4, a shareholder transferred shares of X's outstanding stock to Trust3. X represents that Trust3 was eligible to be an ESBT within the meaning of § 1361(e) on D4, but the trustee did not timely file an ESBT election. Therefore, Trust3 was not a permitted shareholder, and if X's S corporation election had not terminated on D3, it would have terminated on D4.

On D5, a shareholder transferred shares of X's outstanding stock to Trust4 and Trust5. X represents that Trust4 and Trust5 were eligible to be QSSTs within the meaning of § 1361(d) on D5, but the income beneficiaries did not timely file QSST elections. Therefore, neither Trust4 nor Trust5 was a permitted shareholder, and if X's S corporation election had not terminated on D3 or D4, it would have terminated on D5.

X represents that the terminations were not motivated by tax avoidance or retroactive tax planning. X further represents that X and its shareholders have filed consistently with the treatment of X as an S corporation since D2. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

### LAW AND ANALYSIS

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 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) provides that the term "small business corporation" means 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(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 a shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B) an ESBT may be a 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 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 1361(d)(2)(D) provides that an election under § 1361(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

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 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 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust. Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee.

Section 1.1361-1(m)(2)(i) provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1362(d)(2)(A) provides that an election under § 1362(a) will 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(d)(2)(B) provides that any termination under § 1362(d) is effective on and after the date of cessation.

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 the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the 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 of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation will be treated as 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 D3. We also conclude that the circumstances resulting in the termination were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), X will be treated as an S corporation from D3 and thereafter, provided X's S corporation election was otherwise valid and has not otherwise terminated under § 1362(d).

This ruling is conditioned on the beneficiaries of Trust1 filing a QSST election effective D3, and Trust4 and Trust5 filing QSST elections effective D5, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the QSST elections.

This ruling is also conditioned on the trustee of Trust2 filing an ESBT election effective D3, and the trustee of Trust3 filing an ESBT election effective D4, with the appropriate service center within 120 days of the date of this letter. A copy of this letter should be attached to the ESBT elections.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the facts described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation, the eligibility of Trust1, Trust4, or Trust5 to be a QSST, or the eligibility of Trust2 or Trust3 to be an ESBT.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

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.

Sincerely,

James A. Quinn  
Senior Counsel, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter  
Copy for § 6110 purposes