

Internal Revenue Service

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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:B03

PLR-114055-18

Date:

May 22, 2018

Legend

X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State =

A =

Trust =

Dear _____ :

An earlier version of this Private Letter Ruling, dated September 5, 2017 (PLR-113266-17), was published. 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). This letter, as of its effective date, supersedes PLR-113266-17.

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, an eligible S corporation shareholder pursuant to § 1361(c)(2)(A)(iii). However, Trust continued to hold the X stock after the 2-year period had ended on Date 5. According to X, Trust qualifies as a qualified subchapter S trust (QSST), but its beneficiary made no QSST election. As a result, X's S corporation election terminated on Date 5.

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 6. 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 1362(a) provides that a small business corporation may elect 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)(B) provides that a "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 1 class of stock.

Section 1361(c)(2)(A)(iii) provides that a trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

Section 1361(d)(1) provides, in part, that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2) (A) such trust shall be treated as a trust described in § 1361(c)(2)(A)(i), (B) 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 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was 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 (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, 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 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 such ineffectiveness, the corporation shall 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 Date 5 when the beneficiary 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 5, 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 beneficiary of Trust filing a QSST election effective Date 5 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)

cc: