

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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, ID No.

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PLR-137411-17

Date:  
June 11, 2018

### LEGEND

Company =

Date 1 =

Date 2 =

State =

Trustee =

Trust 1 =

A =

Trust 2 =

Dear ,

This letter responds to a letter dated December 12, 2017, submitted on behalf of Company, requesting relief under § 1361 of the Internal Revenue Code.

### FACTS

The information submitted states that Company was incorporated in State on Date 1 and elected to be an S corporation effective Date 2.

Trustee is the sole trustee of Trust 1, which is an Electing Small Business Trust (ESBT) as defined in section 1361(e)(1). Trust 1 holds A shares of voting stock in Company. Trust 1 is a permissible S corporation shareholder under § 1361(c)(2)(A)(v). Under § 1361(c)(2)(B)(v), the potential current beneficiaries of Trust 1 are treated as the shareholders of the S corporation, Company.

Trustee of Trust 1 intends to transfer its shares of Company from Trust 1 to a new trust, Trust 2, a voting trust. Trust 2 will be governed pursuant to a Voting Trust Agreement, which will be entered into by Trustee in his capacity as trustee for both Trust 1 and Trust 2, as well as Company. Trust 2 will provide a mechanism to coordinate the voting of shares of Company into a single block. This is a measure taken in case Trust 1 divides into separate shares in the future.

### LAW

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

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 that is not an ineligible corporation and that 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 section 1361(b)(1)(B), a trust may be a shareholder if all of it is treated (under subpart E of part I of subchapter J of chapter 1) as owned by an individual who is a citizen or resident of the United States. Section 1361(c)(2)(B)(i) provides that for purposes of section 1361(b)(1), in the case of a trust described in section 1361(c)(2)(A)(i), the deemed owner shall be treated as the shareholder.

Section 1361(c)(2)(A)(iv) provides that a trust created primarily to exercise the voting power of stock transferred to it may be a shareholder. Section 1361(c)(2)(B)(iv) provides that in the case of a trust described in § 1361(c)(2)(A)(iv), each beneficiary of the trust shall be treated as a shareholder.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(c)(2)(B)(v) provides that for purposes of § 1361(b)(1)(B), each potential current beneficiary of an ESBT shall be treated as a shareholder; except that, if for any period there is no potential current beneficiary of the ESBT, the ESBT shall be treated as the shareholder during such period.

Section 1361(e) provides that 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)(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. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

### CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Trust 2, a voting trust, is a permissible shareholder of Company pursuant to section 1361(c)(2)(A)(iv). Additionally, following the transfer of shares of Company from Trust 1 to Trust 2, each potential current beneficiary of Trust 1 will continue to be treated as a shareholder of Company for purposes of section 1361(b)(1), pursuant to section 1361(c)(2)(B)(iv) and section 1361(c)(2)(B)(v).

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 Company's eligibility to be an S corporation or whether Trust 1 was or is otherwise eligible to be an ESBT.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), 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 Company's authorized representatives.

Sincerely,

*Joy C. Spies*

Joy C. Spies  
Senior Technician Reviewer  
(Passthroughs & Special Industries)

cc: