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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B03
PLR-106196-19

Date:
August 22, 2019

LEGEND

X =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

A =

Dear :

This responds to a letter dated March 7, 2019, and subsequent correspondence submitted on behalf of X, 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 transferred X stock to Trust 1 and Trust 2. X represents that Trust 1 and Trust 2 were treated as a wholly-owned grantor trusts under §§ 671 and 676.

On Date 3, Trust 1 ceased to be a grantor trust with respect to A's interests. On Date 4, Trust 2 ceased to be a grantor trust with respect to A's interests.

X represents that Trust 1 and Trust 2 qualified to elect to be treated as electing small business trusts (ESBTs), however, the trustee failed to make timely ESBT elections within the meaning of § 1361(e)(1)(A)(v). Consequently, X's S corporation election terminated on Date 3 when the trustee failed to make an ESBT election for Trust 1. The failure to make the ESBT election for Trust 2 on Date 4, would have terminated X's S corporation election had it not already been terminated Date 3.

X represents that the circumstances resulting in the termination of their respective S corporation elections were inadvertent and not motivated by tax avoidance. X further represent that it filed returns consistent with its status as an S corporation. X and its shareholders agree 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)(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(c)(2)(A)(v) provides that for the purposes of § 1362(b)(1)(B), an ESBT may be an S corporation shareholder.

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 section 170(c)(2), (3), (4) or (b) 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)(1)(B) provides that the term ESBT does not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

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.

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 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

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 3, when Trust 1 ceased to be a grantor trust, because the trustee of Trust 1 failed to timely file the ESBT election under § 1361(e)(1)(A)(v). 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 3, it would have terminated on Date 4, when Trust 2 ceased to be a grantor trust, and the trustee of Trust 2 failed to a timely file the ESBT election under § 1361(e)(1)(A)(v). Similarly, this termination would have been inadvertent within the meaning of § 1362(f).

Pursuant to the provisions of § 1362(f), X will be treated as an S corporation on and after Date 3, unless X's S corporation election is otherwise terminated under § 1362(d). This ruling is conditioned on (1) the trustee of Trust 1 filing an ESBT election effective Date 3, with the appropriate service center within 120 days of the date of this letter, and 2) the trustee of Trust 2 filing an ESBT election for Trust 2 effective Date 4, within 120 days from the date of this letter. A copy of this letter should be attached the ESBT elections.

Specifically, we express or imply no opinion regarding whether X is otherwise eligible to be treated as an S corporation or whether Trust 1 and Trust 2 are eligible to be treated as ESBTs.

This ruling is directed only to the taxpayers 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.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter ruling to your authorized representatives.

Sincerely,

Stacy L. Short
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures: Copy of this letter
Copy of this letter for § 6110 purpose

cc: