

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202139005**
Release Date: 10/1/2021

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1361.00-00, 1361.03-00,
1361.03-02, 1362.00-00,
1362.02-00, 1362.02-02,
1362.04-00

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:03
PLR-104176-21

Date:
July 08, 2021

Legend

X:

Trust 1:

Trust 2:

Trust 3:

Trust 4:

Trust 5:

Trust 6:

Trust 7:

Trust 8:

Trust 9:

Trust 10:

Trust 11:

Trust 12:

State:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Dear _____ :

This responds to a letter dated February 22, 2021, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1, under the laws of State. Effective Date 1, X elected to be taxed as an S corporation. However, on Date 2, shares of X were transferred to Trust 1, Trust 2, Trust 3, and Trust 4. The beneficiaries of Trusts 1-4 inadvertently failed to file timely QSST elections for the trusts thereby causing X's S corporation election to terminate effective Date 2. On Date 3, shares of X were transferred to Trust 5, Trust 6, and Trust 7. On Date 10 shares of X were transferred to Trust 8. The beneficiaries of Trusts 5-8 also inadvertently failed to file timely QSST elections. On Date 4 and Date 5, shares of X were transferred to Trust 9 and Trust 10, respectively. Trust 9 and Trust 10 each arose out of a decedent's estate. The beneficiaries of Trust 9 and Trust 10 also inadvertently failed to file timely QSST elections by Date 6 and Date 7, respectively. Also, on Date 8 and Date 9, Trust 11 and Trust 12 received shares of X and the trusts of Trust 11 and Trust 12 each failed to timely file an Electing Small Business Trust (ESBT) election. Accordingly, X's S corporation was terminated on Date 2 and Trusts 1-12 were, or would have been, ineligible shareholders of X.

X represents that the circumstances resulting in the failure to file the necessary QSST and ESBT elections were inadvertent and not motivated by tax avoidance or retroactive tax planning. X further represents that X has filed its income tax returns consistent with having a valid S election effective for all taxable years since X elected to be an S corporation. X represents that other than the failure to make timely QSST and ESBT elections, X has qualified as a small business corporation at all times since Date 2. Finally, X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f) that may be required by the Secretary.

X also represents that except for the failure to file timely elections, Trusts 1-10 have qualified as QSSTs and Trusts 11-12 have qualified as ESBTs at all relevant times. X further represents that X and its shareholders, including the trusts and their beneficiaries, will amend their returns consistent with the treatment of trusts as ESBTs or QSSTs respectively.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code 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) as owned by an individual who is a citizen or resident of the United States may be a shareholder of an S corporation.

Section 1361(d)(1) provides that in the case of a QSST for which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of the trust shall be treated as the owner of that portion of the trust that 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 may elect to have § 1361(d) apply. Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of a QSST must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax returns the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1361(d)(3) defines a QSST as a trust, (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States.

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)(1)(B) provides that the term "electing small business trust" shall 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 S corporation election 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(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or termination occurred is a small business corporation; and (4) the corporation for which the election was made or 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 the 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 ineffectiveness or 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 the representations made, we conclude that X's S election inadvertently terminated within the meaning of § 1362(f) on Date 2 because Trusts 1-4, were ineligible shareholders of X. Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 2 and thereafter, provided X's S corporation election is otherwise effective and not terminated under § 1362(d).

This letter ruling is subject to the following conditions: (1) within 120 days from the date of this letter, elections to treat Trusts 1-4 as QSSTs effective Date 2; Trusts 5-7 as QSSTs effective Date 3; Trust 8 as a QSST effective Date 10; Trust 9 as a QSST effective no later than Date 6, and Trust 10 as a QSST effective no later than Date 7, must be made by the respective beneficiary of each trust with the appropriate service center; (2) within 120 days from the date of this letter, elections to treat Trust 11 as an ESBT effective Date 8 and Trust 12 as an ESBT effective Date 9 must be made by the

respective trustee of each trust with the appropriate service center; and (3) X and its shareholders, including the trusts and their beneficiaries, filing any necessary original or amended returns consistent with the relief granted in this letter within 120 days of this letter, including but not limited to income tax returns reflecting the appropriate treatment of trusts as QSSTs or ESBTs. A copy of this letter should be attached to the QSST and ESBT elections and any amended returns. If these conditions are not met, then this letter ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S 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.

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.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

By: _____
Wendy L. Kribell
Senior Technician Reviewer, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

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

cc: