

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:01  
PLR-106496-21

Date:  
December 16, 2021

Legend

X =

Y =

State =

Trust =

A =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated March 15, 2021, submitted on behalf of X, by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

### Facts

You have represented that the facts are as follows. X is a corporation which is the successor of another corporation, Y, which was organized under the laws of State on Date 1. Y filed a Form 2553, Election of a Small Business Corporation, electing to be taxed as an S corporation, effective on Date 2. It is represented that, as of Date 2 (and at all times thereafter), Trust satisfied the qualified subchapter S trust (“QSST”) requirements under section 1361(d)(3). However, the income beneficiary, A, of the Trust did not properly sign the Form 2553, both for electing to be an S corporation and for electing to be a QSST. Because the Form 2553 was not properly signed, Y’s S corporation election was ineffective and the QSST election of Trust was not valid.

X represents that the error and the invalidity of Y’s S corporation election were inadvertent. X also represents that, since Date 2, Y and Y’s shareholders, and X and X’s shareholders, have filed tax returns consistent with Y and X being S corporations and Trust being a QSST. In addition, X and its shareholders (including the shareholders of predecessor Y), agree to make such adjustments, consistent with the treatment of X and Y as S corporations and Trust as a QSST, as may be required by the Secretary.

### Law

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) 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 one class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of § 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 § 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(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), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and 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 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d) apply. Section 1361(d)(2)(D) provides that an election under § 1362(d)(2) shall be effective up to 15 days and 2 months before the date of the election.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust — (A) the terms of which require that — (i) during the life of the current income beneficiary, there shall be only 1 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 income beneficiary in the trust shall terminate on the earlier of such beneficiary’s death or the termination of the trust, and (iv) upon 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 § 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

Section 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the QSST election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or statement including the information listed in § 1.1361-1(j)(6)(ii).

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 1362(a)(2) provides that an election to be an S corporation will only be valid if all persons who are shareholders on the day on which such election is made consent to such election.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the taxable year for which the corporation is an S corporation) the corporation ceases to be a small business corporation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation 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, (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 for which the election was made 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.

Section 1.1362-6(b)(1) provides, in part, that except as provided in § 1.1362-6(b)(3)(iii), the election of the corporation is not valid if any required consent is not filed in accordance with the rules contained in § 1.1362-6(b).

Section 1.1362-6(b)(2)(iv) provides that in the case of a trust described in § 1361(c)(2)(A) (including a trust under § 1361(d)(1)(A) as a trust described in § 1361(c)(2)(A)(i)), only the person treated as the shareholder for purposes of § 1361(b)(1) must consent to the election.

#### Conclusion

Based solely on the facts submitted and the representations made, we conclude that Y's S corporation election was ineffective on Date 2 due to the failure to obtain the consent of A, the income beneficiary of Trust, to the S corporation election, and the failure of A, the income beneficiary of Trust, to sign the QSST election for Trust. The circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), Y will continue to be treated as an S corporation on and after Date 2, until its termination on Date 4, unless the S corporation election is otherwise terminated under § 1362(d), and Trust will be treated as a QSST (assuming that it otherwise qualifies as a QSST), provided that the following conditions are met.

This ruling is conditioned on A, the income beneficiary of Trust, filing a QSST election, effective Date 2, with the appropriate service center within 120 days of the date of this letter. In addition, as a condition to this ruling, A must sign a written statement as described in § 1.1362-6(b)(1) consenting to Y's S corporation election effective Date 2. The written statement must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement is to be associated with Y's originally filed Form 2553. A copy of this letter should be attached to the new Form 2553 and the consent statement.

The shareholders of X and Y must include in income their pro rata share of the separately stated and nonseparately computed items of X and Y as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X and Y as provided in § 1368. If X and Y or its shareholders fail to treat X and Y as described above, this letter ruling will be null and void.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X or Y is or was otherwise a valid S corporation for federal tax purposes, and whether Trust was a QSST within the meaning of § 1361(d)(3).

The ruling contained in this letter is based upon information and representations submitted by the taxpayer accompanied by a penalty of perjury statement executed by the appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification or examination.

Pursuant to a power of attorney on file with this office, we are sending a copy of this letter to X's authorized representatives.

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

Sincerely,

/s/

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Caroline E. Hay  
Senior Counsel, Branch 1  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosure:  
Copy for § 6110 purposes

cc: