

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:
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Date:
December 14, 2021

Legend

Company =

State =

Date 1 =

Date 2 =

Date 3 =

Husband =

Wife =

a =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Dear _____ :

This letter responds to a letter dated July 26, 2021, and subsequent correspondence, submitted on behalf of Company by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

Facts

The information submitted states Company was organized on Date 1, as a corporation under the laws of State. After formation Company elected to be taxed as an S corporation. On Date 2, Husband and Wife jointly donated a% of shares of Company to five joint trusts.

On Date 3, under the provisions of the trust instrument creating the trusts, after the death of Wife each of the five trusts automatically divided each into two separate trusts. Company represents that five of the newly formed Trusts (Trust 1, Trust 2, Trust 3, Trust 4 and Trust 5), have at all times met all of the requirements to qualify as Electing Small Business Trusts (ESBTs) except for trustee's failure to file timely such elections under section 1361(e)(3). Consequently, Trusts were ineligible shareholders, and, as a result, Company's S corporation election terminated on Date 3. Company also represents that the remaining trust shareholders were eligible S corporation shareholders.

Company represents that upon discovering that its S election had terminated, Company took corrective action by filing this request for relief. Company represents that the circumstances resulting in the inadvertent termination and the failure to make timely ESBT elections was inadvertent and not motivated by tax avoidance or retroactive tax planning. Company further represents that it has filed its income tax returns consistent with having a valid S election in effect for all taxable years since Company elected to be an S corporation. Lastly, Company 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.

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 one class of stock.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1361(b)(1)(B), an ESBT may be an S corporation shareholder.

Section 1361(e)(1)(A) 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)(2), (3), (4), or (5), 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)(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) of the Income Tax Regulations provides, in relevant part, 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 1362(a)(1) 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(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 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 circumstances resulting in such ineffectiveness, steps were taken so that the corporation for which the election was made is a small business corporation; and (4) the corporation for which the election was made, 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, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) of the Income Tax Regulations provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that Company's S corporation election was not effective on Date 3, when the trustees of Trusts failed to file ESBT elections under § 1361(e)(3). We further conclude that the ineffectiveness of Company's S election was inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), Company will be treated as an S corporation on and after Date 3, provided Company's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon Company and each of its shareholders filing any amended returns and making such adjustments that are necessary to properly reflect the reporting of Company's items of S corporation income.

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 the Trusts were or are 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 representative.

Sincerely,

Richard T. Probst
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: