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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B3
PLR-116155-21
Date:
February 04, 2022

Legend

X =

A =

B =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

State =

Dear _____ :

This letter responds to your letter dated July 15, 2021, and subsequent correspondence, submitted on behalf of X, requesting a ruling 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. X elected to be an S corporation effective Date 2. On Date 2, shares of X were owned by Trust 1, which X represents was a grantor trust described in §1361(c)(2)(A)(i) of which A was deemed to be the owner, and by Trust 2, which X represents was a grantor trust described in §1361(c)(2)(A)(i) of which B was deemed to be the owner.

On Date 3, A died, causing Trust 1 to cease being a grantor trust. Under § 1361(c)(2)(A)(ii), Trust 1 remained an eligible shareholder through Date 4, two years after A's death. Accordingly, Trust 1 ceased to be an eligible shareholder on Date 5. Therefore, X's S corporation election terminated on Date 5. X represents that, Trust 1 was qualified to elect to be an electing small business trust ("ESBT") under § 1361(e)(1), however no ESBT election was filed.

On Date 6, B died, causing Trust 2 to cease being a grantor trust. Under § 1361(c)(2)(A)(ii), Trust 2 remained an eligible shareholder until Date 7, two years after B's death. Accordingly, Trust 2 ceased to be an eligible shareholder on Date 8, and X's S corporation election, had it not otherwise terminated on Date 5, would have terminated in Date 8. X represents that Trust 2 was qualified to elect to be an ESBT under § 1361(e)(1), however no ESBT election was filed.

On Date 9, all the shares of X held by Trust 1 and Trust 2 were transferred to Trust 3 and Trust 4. X represents that beginning Date 9, Trust 3 and Trust 4 would have qualified as ESBT's under § 1361(e)(1), however no ESBT elections were filed. Therefore, had X's S corporation election not otherwise terminated on Date 5 or Date 8, it would have terminated on Date 9.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1, Trust 2, Trust 3 or Trust 4 to file ESBT elections. X and its shareholders agree to make any 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 the term “small business corporation” means a domestic corporation that is not an ineligible corporation and which does not, among other requirements, 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 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.

Section 1361(c)(2)(A)(ii) provides that for purposes of § 1361(b)(1)(B), a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death, is a permitted shareholder, but only for the 2-year period beginning on the day of the deemed owner’s death.

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

Section 1361(e)(1)(A) provides that, for purposes of § 1361, except as provided in § 1361(e)(1)(B), the term “electing small business trust” 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)-(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 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 part, that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center for which 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 ESBT election must be filed within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a qualified subchapter S trust (QSST) election.

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(d)(2)(A) 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(d)(2)(B) provides that any termination under §1362(d)(2)(A) is effective on and after the date of cessation.

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 termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in 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 of the corporation at any time during the period specified pursuant to § 1362(f), agree to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in termination, the 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 on Date 5 when Trust 1 became an ineligible shareholder. We conclude that the termination was inadvertent within the meaning of § 1362(f). We also conclude that X's S corporation election would have terminated on Date 8 when Trust 2 became an ineligible shareholder, had it not otherwise terminated on Date 5. Additionally, we also conclude that X's S corporation would have terminated on Date 9 when Trust 3 and Trust 4 became ineligible shareholders, had it not otherwise terminated on Date 5.

Furthermore, we conclude that X will continue to be treated as an S corporation from Date 5 and thereafter, provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

This letter is subject to the following conditions that must occur within 120 days from the date of this letter (1) the trustee of Trust 1 must file an election to treat Trust 1 as an ESBT with the appropriate service center effective Date 5, (2) the trustee of Trust 2 must file an election to treat Trust 2 as an ESBT with the appropriate service center effective Date 8, (3) the trustees of Trust 3 and Trust 4 must each file an election to treat Trust 3 and Trust 4 as ESBTs with the appropriate service center(s) effective Date 9, and (4) X and its shareholders must file any necessary original and amended returns for all open years, including consistent with the relief granted in this letter consistent with the treatment of Trust 1, Trust 2, Trust 3 and Trust 4 as ESBTs. If the statute of limitations for any year closes prior to 120 days from the date of this letter, condition (4) must be satisfied before the date the statute of limitations closes for that year.

A copy of this letter should be attached to each ESBT election. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must notify the service center where X's S corporation election is filed that it's S corporation election has terminated..

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied on whether X is otherwise eligible to be an S corporation, or whether Trust 1, Trust 2, Trust 3 or Trust 4 qualify as ESBTs.

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.

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.

Under a power of attorney on file with this office, we are sending a copy of this letter to your 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: