

**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:

CC:PSI:03

PLR-105854-22

Date:

September 16, 2022

Legend:

Company: =

State =

Trust 1: =

Trust 2: =

Date 1: =

Date 2: =

Date 3: =

Date 4 =

Dear :

This letter responds to a letter dated February 25, 2022, 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, under the laws of State. Effective Date 2, Company elected to be taxed as an S corporation.

On Date 3, shares of Company were transferred to Trust 1 and Trust 2 (collectively "Trusts"). As of Date 3, Trusts were eligible to elect to be treated as Electing Small Business Trusts (ESBTs) within the meaning of section 1361(e). However, the trustees of Trusts filed elections for Trusts to be treated as ESBTs effective Date 4 rather than Date 3. Accordingly, Company's S corporation election terminated effective Date 3, because membership interests in Company were transferred to Trusts, which were at that time ineligible shareholders.

Company represents that the termination was not motivated by tax avoidance or retroactive tax planning. Company further represents that Company and its shareholders have filed their respective income tax returns consistent with Company's S corporation election. Company and its shareholders have agreed to make any adjustments that the Secretary may require, consistent with the treatment of Company as an S corporation.

## 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.

### CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Company's S corporation election terminated on Date 3 when the trustees of Trusts failed to file an ESBT elections under § 1361(e)(3). We further conclude that the termination 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 2, provided Company's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the following: within 120 days of this letter (1) the trustees of the Trusts filing an ESBT election effective Date 3, and (2) Company and its shareholders filing any original and amended returns for all open taxable years consistent with the relief granted in this letter. A copy of this letter should be attached to any elections or returns.

If the conditions are not met, this ruling is null and void. In addition, if these conditions are not met, Company must send notification that its S corporation election has terminated to the service center with which Company's S election was filed.

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,

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Richard T. Probst  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures :

Copy of this letter for § 6110 purposes

cc: