

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

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Date:
April 21, 2023

LEGEND

X =

State =

Date 1 =

Date 2 =

Date 3 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Dear :

This responds to a letter dated October 11, 2022, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X filed an election in accordance with provisions of § 1362(a) of the Code to be taxed as an S corporation effective Date 2.

On Date 3, Trust 1, Trust 2, Trust 3 and Trust 4 each acquired shares of X stock. X represents that Trust 1, Trust 2, Trust 3 and Trust 4 each met the requirements of an Electing Small Business Trust (ESBT) within the meaning of § 1361(e)(1)(A), except that the trustees of Trust 1, Trust 2, Trust 3 and Trust 4 failed to file an election under § 1361(e)(3) for each respective trust to be an ESBT effective Date 3. Consequently, Trust 1, Trust 2, Trust 3 and Trust 4 were ineligible shareholders of X and X's S corporation status was terminated on Date 3. Nevertheless, X represents that Trust 1, Trust 2, Trust 3 and Trust 4 have each filed federal income tax returns consistent with having a valid ESBT election in effect during all relevant taxable years.

X represents that the circumstances resulting in the termination of X's S corporation election were not motivated by tax avoidance or retroactive tax planning considerations. X further represents that for each taxable year since X elected to be an S corporation, X and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X. Further, X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

LAW

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not 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)(v) provides that, for purposes of § 1361(b)(1)(B), an ESBT is a permitted shareholder of a small business corporation.

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 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 Qualified Subchapter S Trust 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 (A) in general, an election under § 1362(a) shall 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, and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation (A) 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 or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's S corporation election terminated on Date 3 when Trust 1, Trust 2, Trust 3, and Trust 4 became ineligible shareholders. We further conclude that the circumstances resulting in the termination of X's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation from Date 3 and thereafter, provided that

X's S corporation election was valid and was not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

This letter is subject to the following conditions, which must occur within 120 days from the date of this letter: (1) the trustees of Trust 1, Trust 2, Trust 3, and Trust 4 must each file an election to treat Trust 1, Trust 2, Trust 3, and Trust 4 as an ESBT effective Date 3 with the appropriate service center; and (2) X and each of its shareholders must file any necessary original or amended returns for all open taxable years consistent with the relief granted in this letter.

A copy of this letter should be attached to each ESBT election. Furthermore, if these conditions are not met, X must notify the service center where X's S corporation election is filed that its S corporation election has terminated effective Date 3.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation or the eligibility of Trust 1, Trust 2, Trust 3, or Trust 4 to be an ESBT.

The ruling contained in this letter is based on 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 that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a power of attorney on file, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: