

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-107670-23

Date:
October 06, 2023

LEGEND

X =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4

Date 5

\$n =

Dear :

This letter responds to a letter dated April 4, 2023, and subsequent correspondence, submitted on behalf of X by X's authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

According to the information submitted and representations made, X, organized under the laws of State on Date 1, made an election to be treated as an S corporation effective on Date 2. On Date 3, membership interests in X were transferred to Trust 1. On Date 4, membership interests in X were transferred to Trust 2. Trustees of Trust 1 and Trust 2 did not make timely elections for Trust 1 and Trust 2 to be treated as an electing small business trust (ESBT) under § 1361(e)(3), thus causing X's S election to terminate effective Date 3 and Date 4.

X represents that Trust 1 and Trust 2 have at all times met the requirements of an ESBT within the meaning of § 1361(e), except that the trustees of Trust 1 and Trust 2 did not make a timely ESBT election under § 1361(e)(3). X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that X and its shareholders have filed income tax returns consistent with having a valid S election in effect for all taxable years since its election on Date 2. X and X's shareholders from Date 3 and thereafter consent to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Commissioner.

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) provides that the term "small business corporation" means a domestic corporation that is not an ineligible corporation and 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 1 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)(1)(B) provides that an ESBT does not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

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 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 QSST 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 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. A termination of an S corporation election 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 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 is a small business corporation, 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 the adjustments (consistent with the treatment of the corporation as an S corporation) as might 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 the representations made, we conclude that

X's S corporation election terminated on Date 3 and Date 4 when the trustees of Trust 1 and Trust 2 failed to make elections under section § 1362(e)(3) to treat Trust 1 and Trust 2 as ESBTs effective Date 3 and Date 4. We further conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, pursuant to the provisions of § 1362(f), X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This letter is contingent on the following: within 120 days of this letter (1) the trustees of Trust 1 and Trust 2 filing an election to treat Trust 1 and Trust 2 as ESBTs, effective Date 3 and Date 4, respectively, with the appropriate service center, and (2) Trust 1 and Trust 2 filing any amended returns and making adjustments to properly reflect the treatment of the trusts as ESBTs for all open taxable years. A copy of this letter should be attached to any elections or returns.

Furthermore, as an adjustment under § 1362(f)(4), a payment of \$n and a copy of this letter must be sent to the following address:

Internal Revenue Service
Kansas City Service Center
333 W. Pershing Road
Kansas City, MO 64108
Stop 7777
Attn: Manual Deposit

This payment and a copy of this letter must be sent no later than Date 5.

If the conditions are not met, this ruling is null and void. In addition, if these conditions are not met, X must notify the service center with which it filed its S corporation election that its election terminated on Date 3.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts 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 Trust 1 and Trust 2's eligibility to elect to be treated as an ESBT.

The ruling contained in this letter are 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 request for rulings, it is subject to verification on examination.

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.

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

Sincerely,

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

Enclosure

Copy for § 6110 purposes

cc: