

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202407005**
Release Date: 2/16/2024

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1361.00-00, 1361.03-00,
1361.03-02, 1361.03-03,
1362.00-00, 1362.04-00

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-117761-23
Date:
November 16, 2023

X = EIN:

A =

Original Trust =

Trust 1 = EIN:

Trust 2 = EIN:

Trust 3 = EIN:

Trust 4 = EIN:

Trust 5 = EIN:

Trust 6 = EIN:

Trust 7 = EIN:

Trust 8 =
EIN:

Trust 9 =
EIN:

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

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

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1 and made a valid S corporation election effective as of formation.

A, an individual and eligible shareholder owned shares of X. During A's lifetime, A transferred the shares of X to Original Trust. Original Trust was treated as an eligible shareholder of X under § 1361(c)(2)(A)(i). On Date 2, A died.

An election under § 645 was made to treat Original Trust as part of A's estate for federal tax purposes. Therefore, Original Trust remained an eligible shareholder of X until Date 3.

On Date 3, Original Trust transferred all its shares of X to Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, Trust 8, and Trust 9. Each of Trust 1 through Trust 9, was an eligible Qualified Subchapter S Trust (QSST) or Electing Small Business Trust (ESBT), as applicable.

Although it was intended that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7, and Trust 8 be QSSTs, the income beneficiary of each of Trust 1 through Trust 8 failed to make a valid QSST election. It was intended that Trust 9 be an ESBT; however, the trustee of Trust 9 failed to make a valid ESBT election. Therefore, each of Trust 1 through Trust 9 became an ineligible shareholder of X as of Date 3 thereby causing X's S corporation election to terminate as of Date 3.

X represents that there was no tax avoidance or retroactive tax planning involved in failing to file the QSST elections or the ESBT election and the resulting termination of X's S corporation election was inadvertent. X and its shareholders agree to make any adjustments that the Secretary may require as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code. X also represents that Trust 1 through Trust 8 qualify as QSSTs as of Date 3 and have consistently been treated as QSSTs, Trust 9 qualifies as an ESBT as of Date 3 and has consistently been treated as an ESBT, and X has qualified as an S corporation and has been consistently treated as an S corporation as of Date 1.

LAW AND ANALYSIS

Section 645(a) provides that if both the executor of an estate and the trustee of a qualified revocable trust elect the treatment provided in this section, such trust shall be treated and taxed as part of such estate (and not as a separate trust) for all taxable years of the estate ending after the date of the decedent's death and before the applicable date.

Section 645(b)(2) provides that the term "applicable date" means (A) if no return of tax imposed by chapter 11 is required to be filed the date which is 2 years after the date of the decedent's death and (B) if such return is required to be filed, the date which is 6 months after the date of the final determination of the liability for tax imposed by chapter 11.

Section 1.645(b)(1) provides, in part, that a qualified revocable trust is any trust (or portion thereof) that on the date of death of the decedent was treated as owned by the decedent under § 676 by reason of a power held by the decedent (determined without regard to § 672(e)). A trust that was treated as owned by the decedent under § 676 by reason of a power that was exercisable by the decedent only with the approval or consent of a nonadverse party or with the approval or consent of the decedent's spouse is a QRT. A trust that was treated as owned by the decedent under § 676 solely by reason of a power held by a nonadverse party or by reason of a power held by the decedent's spouse is not a QRT.

Section 1.645(b)(2) provides that an electing trust is a QRT for which a valid § 645 election has been made. Once a § 645 election has been made for the trust, the trust shall be treated as an electing trust throughout the entire election period.

Section 1361(a)(1) of the Code provides that the term S Corporation means, with respect to a taxable year, a small business corporation for which an election under § 1362(a) is in effect for such taxable year.

Section 1361(b)(1) provides that the term "small business corporation" means 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 shareholder, and (D) have more than one class of stock.

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) as owned by an individual who is a citizen or resident of the United States may be a shareholder of an S corporation.

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

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2) the trust is treated as a trust described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of the trust is treated as the owner of the portion of the trust which consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only one income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such a beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary’s death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (b) all of the income (within the meaning of § 643(b)) of which is distributed (or required to be distributed) currently to one individual who is a citizen or resident of the United States. A substantially separate and independent share of a trust within the meaning of § 663(c) shall be treated as a separate trust for purposes of § 1361(d)(3) and § 1361(c).

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 where (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 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 year of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(j)(6)(ii) provides that the beneficiary of a QSST must make the QSST 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(j)(6)(ii).

Section 1.1361-1(j)(6)(iii) provides that the QSST election must be made within the 16-day-and-2 month period beginning on the day that the stock is transferred to the trust.

Section 1.1361-1(m)(2)(i) 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)(ii) provides that the ESBT election must be filed within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election.

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(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)(b)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or was terminated under § 1362(d)(2), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the election was made or the termination occurred is a small business corporation or to acquire the required shareholder consents, and (4) the corporation for which the election was made or the termination occurred, 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 of termination, such 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 3 because no valid QSST elections were made for Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, Trust 7 and Trust 8, and no valid ESBT election was made for Trust 9. We further conclude that the termination of X's S corporation status on Date 3 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 3, and thereafter, provided that X's S corporation election was otherwise valid and was not otherwise terminated under § 1362(d). This ruling is contingent upon the filing of QSST elections for each of Trust 1 through Trust 8, and the filing of an ESBT election for Trust 9,

respectively, within 120 days of the date of this letter. A copy of this letter should be attached to each QSST and ESBT election.

Except as specifically ruled upon above, we express or imply no opinion concerning the consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation, Trust 1 through Trust 8's eligibility to be QSSTs, or Trust 9's eligibility 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 X's authorized representative.

Sincerely,

/s/ _____
Darshan H. Chulani
Senior Counsel, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes

cc: