

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **202411001**

Release Date: 3/15/2024

Index Number: 1361.03-00, 1361.03-02,  
1362.04-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Fax:

Refer Reply To:  
CC:PSI:B03  
PLR-109549-23  
Date:  
December 01, 2023

### Legend

X =

A =

State =

Trust =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

\$m =

Dear

This letter responds to a letter dated April 25, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

### FACTS

According to the information submitted, X was incorporated on Date 1 under the laws of State. A, a shareholder of X, died on Date 2 and subsequently some of A's shares of X were distributed to Trust. On Date 4, X elected to be taxed as an S corporation effective Date 3. X represents that Trust was a Qualified Subchapter S Trust (QSST) eligible to elect under § 1361(d)(2) to be treated as a permitted

shareholder of an S corporation (QSST election). However, the beneficiary of Trust failed to make a timely election under § 1362(d)(2) to treat Trust as a QSST, causing X's S corporation election to be ineffective.

X represents that Trust has at all times met the requirements as an QSST within the meaning of § 1361(d), except that the beneficiary of Trust did not make a timely QSST election under § 1361(d)(2). X further represents that the circumstances resulting in X's S corporation election being ineffective were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that since inception X and its shareholders have filed consistently with X's treatment as an S corporation and Trust being a QSST since Date 3. Finally, 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) 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 in part 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)(i) provides that, for the purposes of § 1362(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 is a permitted S corporation shareholder.

Section 1361(d)(1) provides, in part, that in the case of a QSST for 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 shall be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d) apply. Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of a QSST must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax returns the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1361(d)(3) defines a QSST as 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 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.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will 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. 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, 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 facts submitted and the representations made, we conclude that X's initial S corporation election was ineffective on Date 3 because the sole beneficiary of Trust failed to file a timely QSST election under § 1361(d)(2). We further conclude that the invalidity of X's S corporation election was inadvertent within the meaning of § 1362(f). Therefore, under § 1362(f), X will be treated as an S corporation on and after Date 3, provided X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the following: (1) the beneficiary of Trust must file within 120 days of the date of this letter a QSST election effective Date 3 with the appropriate service center and attach a copy of this letter to the QSST election; (2) Trust must file within 120 days from the date of this letter amended returns for all years consistent with the requested relief to properly reflect the treatment of Trust as a QSST

and attach a copy of this letter to such returns; (3) Trust must properly indicate its status as a QSST on all future returns filed by Trust; and (4) the trustee of Trust must sign a written statement as described in § 1.1362-6(b)(1) consenting to X's S corporation election effective Date 3. The written statement must be filed with the appropriate service center within 120 days from the date of this letter, indicating that the statement is to be associated with X's originally filed Form 2553. A copy of this letter should be attached to the QSST election, the consent statement and any amended returns.

Furthermore, as an adjustment under § 1362(f)(4), X must send a payment of \$m with a copy of this letter within 45 days from the date of this letter to the following address:

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

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

Except as specifically provided herein, we express or imply no opinion concerning the federal tax 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 or Trust's eligibility to be a QSST within the meaning of § 1361(d)(3).

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 that requested it. According to § 6110(k)(3), this ruling 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,

Robert D. Alinsky  
Chief, Branch 3  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure

Copy of this letter for Section 6110 purposes

cc: