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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-113270-23
Date:
December 28, 2023

Legend

X =

A =

Trust 1 =

Trust 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State =

Dear _____ :

This letter responds to a letter dated June 14, 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

The information submitted states that X was incorporated on Date 1 under the laws of State. X elected to be an S corporation effective Date 2. A, an individual, owned shares of X stock through Trust 1 and Trust 2. Trust 1 and Trust 2 were eligible S corporation shareholders under § 1361(c)(2)(A)(i). On Date 3, A died. After A's death, Trust 1 elected under § 645 to be included in A's estate. A's estate was closed on Date 4. Under § 1361(c)(2)(A)(ii), Trust 2 qualified as an eligible S corporation shareholder for the two-year period beginning on the day the shares of X stock were transferred to it, ending Date 5.

X represents that beginning on Date 3, both Trust 1 and Trust 2 met the requirements of an Electing Small Business Trust (ESBT) within the meaning of § 1361(e)(1)(A). However, the trustees of Trust 1 and Trust 2 did not make a timely election for Trust 1 or Trust 2 to be treated as ESBTs under § 1361(e)(3), thus causing X's S corporation election to terminate on Date 4.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 or Trust 2 to file an ESBT election and the resulting termination of X's S corporation election. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under the inadvertent termination rule as provided under § 1362(f) of the Code that may be required by the Secretary.

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 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)(iii) provides that, for purposes of § 1361(b)(1)(B), a trust with respect to stock transferred to it pursuant to the terms of a will may be a shareholder,

but only for the 2-year period beginning on the day on which such stock is transferred to it.

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

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 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)-(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 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 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(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 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 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 or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 645(a) provides that if both the executor (if any) of an estate and the trustee of a qualified revocable trust elect the treatment provided in § 645, 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) provides that for purposes of § 645(a) the term ““applicable date” means (A) if no return of tax imposed by chapter 11 of the Code is required to be filed, the date which is 2 years after the date of the decedent's death, and (B) if such a 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 of the Code.

CONCLUSION

Based solely on the facts submitted and representations made, we conclude that X's S corporation election terminated on Date 4, because no ESBT election was filed for Trust 1. Additionally, we conclude that, had X's S corporation election not terminated on Date 4, X's S corporation election would have terminated on Date 5 because no ESBT election was filed for Trust 2. Lastly, we conclude that the termination of X's S corporation election on Date 4 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 4 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 trustees of Trust 1 and Trust 2 filing an appropriately completed ESBT election for Trust 1 and Trust 2 effective on Date 4 and Date 5, respectively, and upon Trust 1, Trust 2, and their beneficiaries filing timely amended federal income tax returns for all open years consistent with the treatment of Trust 1 and Trust 2 as ESBTs effective Date 4 and Date 5, as necessary. The elections must be made, and any amended returns must be timely filed, with the appropriate service center within 120 days following the date of this letter, and a copy of this letter should be attached to the returns. If these conditions are not met, this ruling is null and void.

Except as specifically ruled upon above, 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 1's or Trust 2'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/
Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure:
Copy for § 6110 purposes

cc: