

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

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CC:PSI:B03  
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Date:  
January 12, 2024

LEGEND:

X =

Trust 1 =

Trust 2 =

State =

Date 1 =

Date 2 =

Date 3 =

Years =

Dear :

This letter responds to a letter dated July 17, 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 and elected to be an S corporation effective Date 2. On Date 3, Trust 1 and Trust 2 acquired shares of X stock. X represents that Trust 1 and Trust 2 were eligible to be electing small business trusts (ESBTs) within the meaning of § 1361(e)(1) effective Date 3. However, the trustee of Trust 1 and Trust 2 failed to make elections under § 1361(e)(3) treating Trust 1 and Trust 2 as ESBTs effective Date 3. Consequently, X's S corporation election terminated on Date 3.

X represents that the circumstances resulting in the termination of its S corporation election were not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments required as a condition of obtaining relief under § 1362(f).

### LAW

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 the year.

Section 1361(b)(1)(B) defines a "small business corporation", in part, as 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 permissible S corporation 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 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 1362(d)(2)(A) 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. Section 1362(d)(2)(B) provides that any termination under § 1362(d)(2) 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 terminated under § 1362(d)(2), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make 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 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 representations made, we conclude that X's S corporation election terminated on Date 3 when Trust 1 and Trust 2, ineligible S corporation shareholders, acquired shares of X stock. 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, X will continue to be treated as an S corporation from Date 3, and thereafter, provided that X's S corporation election was valid and has not otherwise terminated under § 1362(d).

This ruling is contingent on (1) the trustee of Trust 1 and Trust 2 filing ESBT elections for Trust 1 and Trust 2 effective Date 3 with the appropriate service center within 120 days from the date of this letter, and (2) Trust 1 and Trust 2 filing returns, including amended returns, for Years with the appropriate service center within 120 days from the date of this letter to properly reflect the treatment of Trust 1 and Trust 2 as ESBTs effective Date 3. A copy of this letter should be attached to the ESBT elections and the returns.

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.

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 requested ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

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

Sincerely,

Mary Beth Carchia  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy of this letter for § 6110 purposes

cc: