

Internal Revenue Service

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Person To Contact:

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Telephone Number:

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PLR-108995-25

Date:

August 20, 2025

Legend

X =

Y =

State 1 =

State 2 =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Date 1 =

PLR-108995-25

Date 2 =Date 3 =Date 4 =Date 5 =

Dear :

This responds to a letter dated March 28, 2025, 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 and representations made, Y was incorporated under the laws of State 1 on Date 1 and elected to be treated as an S corporation effective Date 2.

On Date 3, Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5 (collectively, Shareholder Trusts) each acquired shares of Y stock. X, as Y's successor, represents that the Shareholder Trusts were each eligible to make Qualified Subchapter S Trust (QSST) elections as of Date 3; however, each of the trust beneficiaries failed to timely make QSST elections for their respective trusts. Thus, the Shareholder Trusts were ineligible shareholders of Y on Date 3, causing Y's S corporation election to terminate effective Date 3.

X was formed under the laws of State 2 on Date 4. On Date 5, as part of what X represents was a reorganization under § 368(a)(1)(F), (1) the owners of all stock in Y, including Trust 1, Trust 2, Trust 3, Trust 4, and Trust 5, contributed all such stock to X, and (2) X elected to treat Y as a Qualified Subchapter S Subsidiary within the meaning of § 1361(b)(3)(B) effective Date 5.

X represents that the circumstances resulting in the termination of X's predecessor Y's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax plannings. X further represents that for each taxable year since X's predecessor Y elected to be an S corporation, X, its predecessor Y, and its shareholders have filed their federal income tax returns consistent with having a valid S corporation election in effect for X and its predecessor Y.

X and its shareholders have agreed to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

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)(B) defines a “small business corporation,” in part, as a domestic corporation that is not an ineligible corporation and that 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 § 1361(b)(1)(B), a trust all of which is treated (under subpart E of part I of subchapter J of chapter 1 of the Code) 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 that a QSST whose beneficiary makes an election under § 1361(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i) and the beneficiary of such trust shall be treated as the owner (for purposes of § 678(a)) of that 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) 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 the 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 that 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 1.1361-1(j)(6)(ii) of the Income Tax Regulations provides that the current income beneficiary of the trust must make the election by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement that meets the requirements of § 1.1361-1(j)(6)(ii)(A) through (E).

Section 1.1361-1(j)(6)(iii) provides that the QSST election must be filed within the time requirements of § 1.1361-1(j)(6)(iii) (A) through (E).

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect to be an S corporation.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will 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 terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such 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 of the corporation at any time during the period specified under § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary for that period, then, notwithstanding the circumstances resulting in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Rev. Rul. 2008-18, situation 1, holds that, consistent with Rev. Rul. 64-250, 1064-2, C.B. 333, a reorganization under § 368(a)(1)(F) did not cause the termination of an S corporation election under § 1362. In Rev. Rul. 2008-18, B, an individual owns all of the stock in Y, an S corporation. In Year 1, B forms Newco and contributes all of the Y stock to Newco. Newco meets the requirements for qualification as a small business corporation and timely elects to treat Y as a qualified subchapter S subsidiary (QSub), effective immediately following the transaction. The transaction meets the requirements of a reorganization under § 368(a)(1)(F). Y's original S election does not terminate but continues for Newco. Newco must obtain a new EIN. Y must retain its EIN even though a QSub election is made for it and must use its original EIN at any time the QSub is otherwise treated as a separate entity for federal tax purposes (including for employment and certain excise taxes) or if the QSub election terminates.

CONCLUSION

Based solely on the information submitted and the representations made, we conclude that X's predecessor Y's S corporation election terminated on Date 3 when the Shareholder Trusts became shareholders because their respective beneficiaries failed to file timely QSST elections under § 1361(d)(2). We further conclude that the circumstances resulting in the termination of X's predecessor Y's S corporation election were inadvertent within the meaning of § 1362(f). Accordingly, pursuant to the provisions of § 1362(f), X and its predecessor Y will be treated as continuing to be an S corporation from Date 3 and thereafter, provided that X's predecessor Y's S corporation election was valid and was not otherwise terminated under § 1362(d).

This letter is subject to the following conditions, which must occur within 120 days from the date of this letter: (1) the beneficiaries of the Shareholder Trusts must

each file an election to treat each Shareholder Trust, respectively, as QSSTs effective Date 3 with the appropriate service center; and (2) X and each of its shareholders must file any necessary original or amended returns for all open taxable years consistent with the relief granted in this letter. A copy of this letter should be attached to each QSST election. Furthermore, if these conditions are not met, X must notify the service center where X's predecessor Y's S corporation election is filed that its S corporation election has terminated effective Date 3.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the transactions described above under any other provision of the Code. Specifically, we express or imply no opinion regarding X's or Y's eligibility to be an S corporation or the eligibility of the Shareholder Trusts to be QSSTs. Further, we express or imply no opinion on the validity of the reorganization under § 368(a)(1)(F) and its tax consequences.

The ruling contained in this letter is based on 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. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jennifer N. Keeney
Senior Counsel, Branch 1
Office of Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:

Copy of this letter for section 6110 purposes

cc: