

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:01
PLR-121534-23

Date:
April 10, 2024

LEGEND

X =

State =

Trust =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This letter responds to a letter dated October 11, 2023, and subsequent correspondence, submitted on behalf of X by its authorized representatives, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

FACTS

The information submitted states that X was incorporated under the laws of State on Date 1. X elected to be an S corporation effective on Date 2. On Date 3, shares of X were transferred to Trust. A Qualified Subchapter S Trust (QSST) election, effective Date 3, was not timely filed for Trust. Accordingly, Trust was an ineligible shareholder of X and X's S corporation election terminated on Date 3.

X represents that Trust has at all times since Date 3 met the requirements of an QSST within the meaning of § 1361(d). X represents that X and its shareholders have continued to treat themselves as though X's S corporation election did not terminate on Date 3. In addition, X represents that the termination of its S corporation status was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Further, X and its shareholders agree to make any adjustments required as a condition of obtaining relief for the termination of X's election as provided under § 1362(f) of the Code that may be required by the Secretary.

LAW AND ANALYSIS

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

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1) provides that a small business corporation means a domestic corporation which is not an ineligible corporation for such year and which does not, among other limitations, 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 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, may be an S corporation 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), such trust shall be treated as a trust described in § 1361(c)(2)(A)(i) and for purposes of § 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in the S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(3) defines a QSST as a trust 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. In addition, the terms of the trust must 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.

Section 1.1361-1(j)(6)(ii) of the Income Taxation Regulations provides that the current income beneficiary of the trust must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(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 a corporation is an S corporation) such corporation ceases to be a small business corporation. Section 1362(d)(2)(B) provides that the termination shall be effective on and after the date of cessation.

Section 1362(f) provides, in pertinent 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 terminated under § 1362(d)(2) or (3), (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 event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation for which the election was made or the termination occurred is a small business corporation, 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 such ineffectiveness or termination, the corporation shall 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 S corporation status inadvertently terminated within the meaning of § 1362(f) on Date 3 because Trust was an ineligible shareholder. Pursuant to the provisions of § 1362(f), X will be treated as an S corporation from Date 3 and thereafter, provided X's S corporation election is otherwise effective and not terminated under § 1362(d).

This letter ruling is subject to the condition that within 120 days from the date of this letter, the income beneficiary of Trust must file a QSST election effective Date 3 with the appropriate service center. A copy of this letter should be attached to the QSST election.

Except as specifically ruled 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 whether X is otherwise eligible to be an S corporation or whether Trust is otherwise eligible to be a QSST.

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.

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

Sincerely,

/S/

Laura C. Fields
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure

Copy for § 6110 purposes.

cc: