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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PT&E:B01

PLR-115411-24

Date:

February 14, 2025

Legend

X =State =Date 1 =Date 2 =Trust 1 =Trust 2 =a =

Dear :

This ruling is in response to a letter dated August 27, 2024, submitted on behalf of X by X's authorized representatives, requesting relief under § 1362(f) of the Internal Revenue Code ("Code").

FACTS

The information submitted states that X organized as a limited liability company on Date 1 under the laws of State and filed an election under § 1362(a) to elect to be treated as an S corporation effective Date 1. Shares of X were transferred to Trust 1 and Trust 2 on Date 2.

X represents that at all times beginning on Date 2, both Trust 1 and Trust 2 met the requirements of Electing Small Business Trusts (“ESBT”) within the meaning of § 1361(e)(1)(A). However, the trustees of Trust 1 and Trust 2 inadvertently failed to file timely elections under § 1361(e)(3) for Trust 1 and Trust 2 to be treated as ESBTs, thus causing X’s S corporation election to terminate effective Date 2.

X represents that there was no tax avoidance or retroactive tax planning involved in the failure of Trust 1 and Trust 2 to file ESBT elections 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) 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) defines a “small business corporation” as 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 1 class of stock.

Section 1361(c)(2)(A)(i) provides that, for purposes of section 1361(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 may be an S corporation shareholder.

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(c)(2)(A)(v) provides that, for purposes of § 1362(b)(1)(B), an ESBT may be an S corporation shareholder.

Section 1361(e)(1)(A) provides that an ESBT 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), (3), (4), or (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) 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(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); (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 termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be; and (4) the corporation for which 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 or a qualified subchapter S subsidiary, as the case may be) 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 or a qualified subchapter S subsidiary, as the case may be, during the period specified by the Secretary.

Section 1.1362-4(d) provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election terminated on Date 2 because ESBT elections were not filed for Trust 1 and Trust 2. We further conclude that the termination of X's S election on Date 2 was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as an S corporation effective Date 2, and thereafter, provided X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon the trustees of Trust 1 and Trust 2 filing appropriately completed ESBT elections for Trust 1 and Trust 2 effective Date 2, and upon Trust 1 and 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 2. The election must be made and the 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.

Additionally, a payment of \$a must be sent to the following address: Internal Revenue Service, Kansas City Submission Processing Campus, 333 W. Pershing Road, Kansas City, MO 64108, Stop 7777, Attn: Manual Deposit. X must send this payment no later than 120 days from the date of this letter. If this condition is not met, then this ruling is null and void. Furthermore, if this condition is not met, X must notify the Kansas City Submission Processing Campus that its S corporation election has terminated.

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 and Trust 2's eligibility to be ESBTs.

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

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the taxpayer's authorized representatives.

Sincerely,

_____/s/_____

Christiaan T. Cleary
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure

Copy for § 6110 purposes

PLR-115411-24

cc: