

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

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PLR-117521-24

Date:

March 31, 2025

LEGEND

X =

A =

B =

Trust 1 =

Trust 2 =

Trust 3 =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear :

This letter responds to a letter dated September 23, 2024, 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

According to the information submitted, X was formed as a limited liability company under the laws of State on Date 1. X elected treatment as an S corporation effective Date 1.

On Date 2, A sold all shares in X to Trust 1. Trust 1 was intended to satisfy the requirements to be classified as an Electing Small Business Trust (“ESBT”). However, Trust 1 inadvertently failed to file an ESBT election. X’s S election, therefore, terminated on Date 2 when Trust 1 became an ineligible shareholder of X.

On Date 3, Trust 1 sold its entire interest, all shares in X, to A, acting as Trustee of Trust 2. Trust 2 qualified as A’s grantor trust. On Date 4, interest in X was transferred from Trust 2 to Trust 3, a grantor trust of B. Together, Trust 2 and Trust 3 owned all shares of X.

X represents that the circumstances resulting in the termination of X’s S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. Additionally, X represents that it has filed its federal income tax returns consistent with having a valid S corporation election in effect since Date 1. 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 an “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)(i) provides that 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 permissible shareholder.

Section 1361(c)(2)(A)(v) provides that 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 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 income 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 relevant 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 trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a Qualified Subchapter S Trust election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

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 terminated under § 1362(d)(2), (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 such 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 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 termination, such corporation shall 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 2 when Trust 1 failed to make an ESBT election. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Accordingly, X will be treated as continuing to be an S corporation from Date 2 and thereafter, provided that its S corporation election was otherwise valid and was not otherwise terminated under § 1362(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed or implied concerning the eligibility of X to be an S corporation or the eligibility of Trust 1 to be an ESBT.

This ruling is directed only to the taxpayer requesting it. According to § 6110(k)(3) of the Code, 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 representatives.

Sincerely,

/s/

Joy C. Spies
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs, Trusts, and Estates)

Enclosure:

Copy of letter for § 6110 purposes

PLR-117521-24

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cc: