

Trust B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year =

State =

Dear :

This responds to a letter dated August 15, 2011, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X was incorporated on Date 1, under the laws of State. Effective Year, X elected to be taxed as an S corporation.

A, a shareholder of X, transferred her X shares to Trust 1. Trust 1 was a grantor trust and an eligible shareholder of X under §1361(c)(2)(A)(i). On Date 2, A died. After A's death, Trust 1 continued to hold the X shares and continued to be an eligible shareholder of X under § 1361(c)(2)(A)(ii) until Date 3.

Under the terms of Trust 1, upon A's death Trust 1 was to be divided into new separate trusts. The X shares were to be held by Trust B and another trust. Trust B was intended to be treated as a qualified subchapter S trust (QSST) effective Date 3 however, B, the beneficiary of Trust B did not file a timely election to treat Trust B as a QSST as of Date 3 and the shares of X to be held by Trust B were not issued to Trust B

until Date 4. The X shares that were to be held by the other trust were instead issued by X to C and D on Date 4. C and D are individuals and eligible shareholders.

On Date 5, E transferred her shares of X to Y. Y is an ineligible shareholder of X. On Date 6, F acquired the shares of X that E transferred to Y. During the period that Y held shares of X, Y and X both treated Y as a shareholder of X with respect to the shares held by Y.

X represents that Trust B qualified as a QSST under § 1361(d) as of Date 4 and thereafter.

X represents that the circumstances resulting in the failure to file a timely QSST election for Trust B, the failure to timely issue the X shares to C and D, and the sale of the X stock to Y was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as 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 § 1361(b)(1)(B), a trust all of which is treated (under subpart E) as owned by an individual who is a citizen or resident of the United States may be a shareholder.

Section 1362(c)(2)(A)(ii) provides that a trust which was described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and which continues in existence after such death, but only for the 2-year period beginning on the day of the deemed owner's death may be a shareholder.

Section 1361(d)(1) provides that a QSST whose beneficiary makes an election under § 1362(d)(2) will be treated as a trust described in § 1361(c)(2)(A)(i), and the QSST's beneficiary will be treated as the owner (for purposes of § 678(a)) of that portion of the QSST's S corporation stock to which the election under § 1361(d)(2) applies. Under

§ 1361(d)(2)(A), a beneficiary of a QSST may elect to have § 1361(d) apply. Under § 1361(d)(2)(D), this election will be effective up to 15 days and two months before the date of the election.

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; 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 ineffectiveness or 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 the representations made, we conclude that X's S corporation election terminated on Date 3 as a result of Trust 1 becoming an ineligible shareholder. We further conclude that the termination of X's S election on Date 3 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as of Date 3 and thereafter, provided that B files a QSST election for Trust B effective Date 4 with the appropriate service center within 120 days from the date of this letter, and X's S corporation election is not otherwise terminated under § 1362(d). A copy of this letter must be attached to the QSST election.

It is further concluded that X will be treated as continuing to be an S corporation during the period of Date 5 to Date 6, and for subsequent periods, unless X's S corporation election is otherwise terminated under the provisions of section 1362(d).

Accordingly, X's shareholders, in determining their respective income tax liabilities, must include their pro rata share of the separately and non-separately computed items of X as provided in § 1366, make any adjustments to stock basis as provided in § 1367, and take into account distributions made by X as of provided by § 1368.

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.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to X's authorized representative.

Sincerely,

Faith Colson

Faith Colson

Senior Counsel, Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes