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Legend

X =

Trust =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

A =

Dear :

This responds to a letter dated November 11, 2011, and subsequent correspondence submitted on behalf of X by its authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was formed in State on Date 1 and made an election to be treated as an S corporation effective Date 2. On Date 3, A created Trust, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. On Date 4, A died and Trust became irrevocable. On Date 5, Trust was funded with shares of X stock. Trust continued to qualify as an S corporation shareholder under § 1361(c)(2)(A)(ii) until Date 6, two years after A's date of death. Trust, however, continued to hold X stock. As such, X's S corporation election terminated on Date 6 when Trust ceased to be an eligible S corporation shareholder.

X represents that X and each of its shareholders have filed consistently with the treatment of X as an S corporation since Date 2. X further represents that the failure to properly file the QSST election for Trust was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments that the Commissioner may require, consistent with the treatment of X as an S corporation.

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)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which 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 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) 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)(ii) and § 1.1361-1(h)(1)(ii) provide that, for purposes of § 1361(b)(1)(B), a trust that is described in § 1361(c)(2)(A)(i) immediately before the death of the deemed owner and that continues in existence after such death is a permitted S corporation shareholder, but only for the two-year period beginning on the day of the deemed owner's death. Section 1.1361-1(h)(3)(i)(B) provides that if stock is held by a trust described in § 1.1361-1(h)(1)(ii), the estate of the deemed owner is generally treated as the shareholder as of the day of the deemed owner's death.

Section 1361(d)(1) provides that in the case of a QSST for which a beneficiary makes an election under § 1361(d)(2), the trust is treated as a trust described in § 1361(c)(2)(A)(i), and for purposes of § 678(a), the beneficiary of the trust shall be treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(2)(A) provides that a beneficiary of a QSST may elect to have § 1361(d) apply. Section 1.1361-1(j)(6)(ii) provides that the current income beneficiary of a QSST must make the election under § 1361(d)(2) by signing and filing with the service center with which the corporation files its income tax returns the applicable form or a statement including the information listed in § 1.1361-1(j)(6)(ii).

Section 1362(d)(2) provides that (A) in general, 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 the corporation is an S corporation) such corporation ceases to be a small business corporation, and (B) any termination under § 1362(d)(2) shall be effective on and after the date of cessation.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) 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 to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the shareholder consents, 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 the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's election to be treated as an S corporation was terminated on Date 6 and that this termination was inadvertent within the meaning of § 1362(f). We further conclude that, pursuant to the provisions of § 1362(f), X will continue to be treated as being an S corporation from Date 6 and thereafter, provided that X is otherwise eligible to be an S corporation and provided that the election was not otherwise terminated under § 1362(d).

This ruling is conditioned upon the shareholders of X including in income their pro rata share of the separately stated and nonseparately computed items of X as provided in § 1366, making any adjustments to basis as provided in § 1367, and taking into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this letter ruling shall be null and void.

This ruling is further conditioned upon the trustee of Trust filing, with the appropriate service center, a QSST election effective Date 6 for Trust. The QSST

election must be filed within 120 days following the date of this letter and a copy of this letter should be attached to the election.

Except as specifically ruled above, we express no opinion concerning the federal tax consequences of the transactions described above under any other provisions of the Code. Specifically, we express no opinion regarding X's eligibility to be an S corporation. Further, we express no opinion on whether Trust is otherwise eligible to be a QSST.

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

Sincerely,

Melissa Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: