

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-102151-15
Date:
October 15, 2015

LEGEND

X =

Y =

A =

B =

C =

D =

E =

F =

G =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

Trust 5 =

Trust 6 =

Trust 7 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year =

Years =

State =

\$a =

\$b =

\$c =

\$d =

\$e =

\$f =

\$g =

\$h =

Dear _____ :

This responds to a letter signed December 29, 2014, and supplemental correspondence, submitted on behalf of X by X's authorized representative, requesting relief under § 1362(f) of the Code.

FACTS

According to the information submitted and representations within, X was incorporated on Date 1 and elected to be taxed as an S corporation effective Date 2, under the laws of State.

Effective Date 2, X elected to treat Y as a Qualified Subchapter S Subsidiary (QSub). X represents that, at all times on and after Date 2, X has owned all of the outstanding stock of Y. X represents that it has treated Y as a QSub effective Date 2 and thereafter and that X has filed tax returns for all tax years consistent with the treatment of Y as a QSub.

On Date 3, X stock was transferred to Trust 1 and Trust 2. On Date 3, an election was not timely filed by the former guardian of A and the guardian of B, the income beneficiaries of Trust 1 and Trust 2 respectively, to qualify Trust 1 and Trust 2 as Qualified Subchapter S Trusts (QSST) thereby causing Trust 1 and Trust 2 to become ineligible shareholders of X. As a result, X's S corporation election terminated on Date 3.

On Date 4, Date 5, Date 6, Date 7, and Date 8, X stock was transferred to Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7, respectively. On Date 4, Date 5, Date 6, Date 7 and Date 8, an election was not timely filed by the guardians of C, D, E, F, and G, respectively, the income beneficiaries of Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7, respectively, to qualify Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 as Qualified Subchapter S Trusts (QSST) thereby causing Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 to become ineligible shareholders of X. As a result, X's S corporation and QSub

elections would have terminated on Date 4, Date 5, Date 6, Date 7, and Date 8, if they had not already terminated on Date 3, or in the case of Date 5, Date 6, Date 7, and Date 8, on one of the earlier dates.

X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 (collectively referred to as the Trusts) were intended to be QSSTs effective Date 3, Date 4, Date 5, Date 6, Date 7, and Date 8, respectively, however timely QSST elections were not filed.

X represents that the Trusts have qualified as QSSTs under § 1361(d) at all times, since the date that each trust first acquired stock in X. X represents that Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 will each make a distribution of \$a, \$b, \$c, \$d, \$e, \$f, and \$g, respectively, to each of the Trusts respective beneficiaries within 120 days of the date of this ruling letter. X represents that the failure to file QSST elections for the Trusts was discovered in Year.

X represents that the circumstances resulting in the termination of X's S corporation election, and the potential later terminations of its S election, were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X represents that other than the failure to make valid QSST elections on Date 3, Date 4, Date 5, Date 6, Date 7, and Date 8, X has qualified as a small business corporation at all times since its election on Date 2. X further represents that X has filed its income tax returns consistent with having a valid S election in effect for all taxable years since X elected to be an S corporation on Date 2. Lastly, 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) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a) provides that an S corporation is a small business corporation for which an election under § 1362(a) is in effect.

Section 1361(b)(1) provides that the terms "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 1 class of stock.

Section 1361(b)(3)(A) generally provides that a Qualified subchapter S subsidiary shall not be treated as a separate corporation and all assets, liabilities, and items of income, deduction, and credit of a Qualified subchapter S subsidiary shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) defines a Qualified subchapter S subsidiary as a domestic corporation which is not an ineligible corporation, if 100 percent of the stock of the corporation is owned by the S corporation, and the S corporation elects to treat the corporation as a Qualified subchapter S subsidiary .

Section 1361(c)(2)(A)(i) of the Code provides that for purposes of section 1361(b)(1) a trust all of which is treated (under subpart E of part I of subchapter J of this chapter) 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) of the Code provides that in the case of a qualified subchapter S trust with respect to which a beneficiary makes an election under paragraph 1361(d)(2) such trust shall be treated as a trust described in subsection 1361(c)(2)(A)(i) and for purposes of section 678(a), the beneficiary of such trust shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph 1362(d)(2) is made.

Section 1361(d)(3) of the Code defines the term “qualified subchapter S trust” as a trust all of the income (within the meaning of section 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 lifetime 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 1.1361-3(a) of the Income Tax Regulations prescribes the time and manner for making an election to be classified as a Qualified subchapter S subsidiary.

Section 1.1361-3(a)(4) provides that an election may be effective up to two months and 15 days prior to the date the election is filed or not more than 12 months after the election is filed. The proper form for making the election is Form 8869, Qualified subchapter S Subsidiary Election.

Section 1361-3(a)(6) provides that an extension of time to make a Qualified subchapter S subsidiary election may be available under procedures applicable under §§ 301.9100-1 and 301.9100-3.

Section 1362(a)(1) provides that except as provided in subsection (g), a small business corporation may elect, in accordance with the provisions of this section, to be an S corporation. Section 1362(a)(2) provides that an election under this subsection shall be

valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such 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 subsection (a) or section 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to subsection (b)(2)) by reason of a failure to meet the requirements of section 1361(b) or to obtain shareholder consents, or (B) was terminated under paragraph (2) or (3) of subsection (d) or section 1361(b)(3)(C); (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 (A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or (B) to acquire the required shareholder consents; and (4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such 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.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that the termination and potential later termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 3 and thereafter, provided X's S corporation election is not otherwise terminated under § 1362(d).

This letter ruling is subject to the following conditions: (1) As an adjustment under § 1362(f)(4), a payment of \$h and a copy of this letter must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd., Covington, KY 41011, Stop 31, Terri Lackey, Manual Deposit. This payment must be sent no later than 120 days from the date of this letter; (2) the trustee of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 will each make a distribution of \$a, \$b, \$c, \$d, \$e, \$f, and \$g, respectively, to each of the Trust's respective

beneficiaries; (3) the Trusts amending their income tax returns for Years within 120 days of the date of this letter; and (4) upon the beneficiaries, or the guardian of the beneficiaries, of Trust 1, Trust 2, Trust 3, Trust 4, Trust 5, Trust 6, and Trust 7 each filing a QSST election under section 1361(d)(2)(A) for their respective trust with an effective date of Date 3, Date 4, Date 5, Date 6, Date 7, and Date 8, respectively. Both A and the former guardian of A should sign the QSST election for Trust 1. These elections should be made with the appropriate service center within 120 days from the date of this letter. A copy of this letter should be attached to the election. If these conditions are not met, then this ruling is null and void. Furthermore, if these conditions are not met, X must send notification that its S election has terminated to the service center with which X's S election was filed.

Furthermore, Y will be treated as a QSub effective Date 2 and thereafter, provided Y otherwise is eligible to be treated as a QSub.

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 whether X otherwise qualifies as an S corporation, or whether Y is eligible to be a QSub, for federal tax purposes.

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,

David R. Haglund
David R. Haglund
Branch Chief, 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